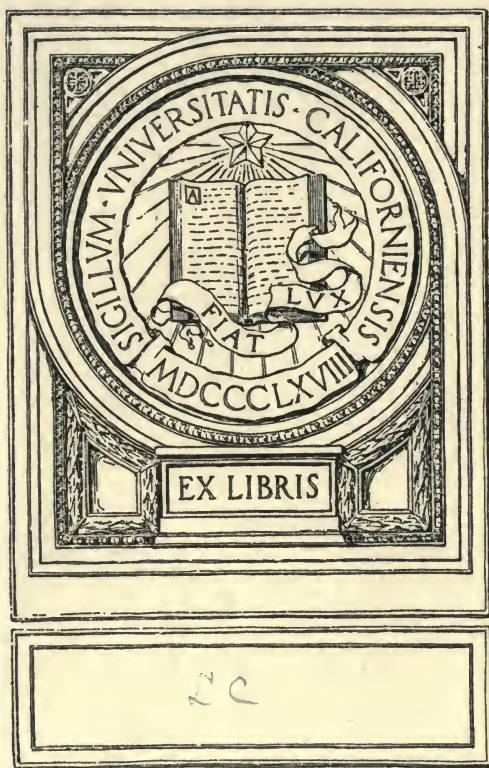


INCOME TAX
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LAW AND CASES

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INCOME TAX

SUPER-TAX AND

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WITH AN ANALYSIS OF THE SCHEDULES,
GUIDE TO INCOME TAX LAW, AND NOTES
ON LAND TAX

A PRACTICAL EXPOSITION OF THE LAW FOR THE
USE OF INCOME TAX OFFICIALS, SOLICITORS,
ACCOUNTANTS, AND BUSINESS MEN GENERALLY

BY

W. E. SNELLING

OF THE INLAND REVENUE DEPARTMENT
AUTHOR OF "INCOME TAX PRACTICE"

SECOND EDITION, REVISED AND ENLARGED



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PREFACE

TO THE SECOND EDITION

THIS book has been very considerably enlarged, principally by the inclusion of reports of about one hundred additional cases, and of many further selections from the text of the judgments. The arrangement of the work has been improved in certain respects, and it is hoped that reference will be facilitated by the Analysis of the Schedules and the Guide to Tax Law printed as appendices. For the rest, the book retains its legal form. The provisions of every section still in force have been stated in detail, and the exact words of the Acts have been followed as far as possible. Wherever it has appeared necessary, the sections have been copied out at length. Those who seek information regarding the application of the law herein set forth to current business practice, may find it in *Income Tax Practice* issued by the same publishers.

It has been the aim of the Author to arrange the matter in a form that may secure for the work the lucidity and consecutive-ness of a text-book as well as the advantages of an index. It has been written in the light of such experience as he has had in the study and administration of the Acts; but it will be understood that it is not an official publication, neither is it issued under the authority of the Board of Inland Revenue.

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CONTENTS

	PAGE
PREFACE	v
TABLE OF SUBJECT HEADINGS	ix
TABLE OF CASES	xi
TABLE OF STATUTES	xxiii
PART I.—INCOME TAX AND SUPER-TAX LAW AND CASES	1
„ II.—INHABITED HOUSE DUTY LAW AND CASES	334
APPENDIX I.—THE SCHEDULES AND THEIR SCOPE	372
„ II.—GUIDE TO INCOME TAX LAW	378
„ III.—LAND TAX	382
INDEX	385

TABLE OF SUBJECT HEADINGS

INCOME TAX

Abatement and Exemption, *p.* 1
 Accounts, *p.* 5
 Affidavits, *p.* 6
 Agents, *p.* 7
 Assessments, General Provisions, 9
 " , First Assessments, *p.*
 15
 " , Additional First
 Assessments, *p.* 20
 " , Appeals, *p.* 22
 " , Adjustment at end of
 year, *p.* 30
 " , Surcharges, *p.* 32
 " , Supplementary Ass-
 essments, *p.* 35
 Assessment Books, *p.* 35
 Assessors, *p.* 36
 Board and Officers, *p.* 38
 British Museum, *p.* 39
 Charge Duplicates, *p.* 39
 Charities, *p.* 40
 Children—Relief in Respect of, *p.* 43
 Clergymen or Ministers, *p.* 44
 Clerk to Commissioners, *p.* 45
 Collection, *p.* 47
 Collectors, *p.* 51
 Commissioners of Land Tax, *p.* 54
 " of Income Tax,
 p. 54
 " , General, *p.* 55
 " , Additional, *p.* 58
 " for the Duties on
 Offices, *p.* 59
 Corporations, Companies and Socie-
 ties, *p.* 61
 Crown, *p.* 61
 Depreciation, *p.* 63
 Double Assessment, *p.* 70
 Earned Income, *p.* 70
 Foreign Minister, *p.* 73

Forms, *p.* 73
 Friendly Societies, *p.* 75
 High Court Cases, *p.* 76
 Husband and Wife, *p.* 78
 Industrial and Provident Societies,
 p. 81
 Insurers, *p.* 82
 Interest, *p.* 82
 Ireland, *p.* 113
 Life Insurance Premiums, *p.* 118
 Non-Residents in the United
 Kingdom, *p.* 120
 Number or Letter Assessments,
 p. 121
 Oaths, *p.* 122
 Parishes, Divisions, etc., *p.* 123
 Patent Royalties, *p.* 124
 Penalties, *p.* 125
 Privilege, *p.* 138
 Proceedings, *p.* 138
 Railways, *p.* 142
 Remuneration, *p.* 144
 Repayment, *p.* 145
 Returns, *p.* 146
 Savings Banks, *p.* 153
 Schedule of Arrears (Defaulters),
 p. 154
 Schedule of Deficiencies, *p.* 155
 Schedules of Assessment — All
 Schedules, *p.* 156
 Schedule A, *p.* 157
 " B, *p.* 191
 " A and B, *p.* 194
 " C, *p.* 200
 " D, *p.* 205
 " E, *p.* 306
 Scotland — Special Provisions,
 p. 320

Special Assessments and Appeals,
p. 324

Special Commissioners, *p.* 325

Stamp Duty, *p.* 325

Super-Tax, *p.* 326

Surveyor, *p.* 331

Trade Unions, *p.* 332

Universities, *p.* 333

Voting, *p.* 333

INHABITED HOUSE DUTY

General Note, *p.* 334

Basis of Charge, *p.* 335

Collection, *p.* 336

Exemptions, *p.* 336

Premises, *p.* 356

Rates of Duty, *p.* 364

Rules of Assessing, *p.* 365

Year of Assessment, *p.* 370

TABLE OF CASES

ABBREVIATIONS

A.C. Law Reports, Appeal Cases.
 Ch. D. Law Reports, Chancery Division.
 Ex. Exchequer Reports.
 Ex. D. Law Reports, Exchequer Division.
 F. Fraser.
 H. & N. .. Hurlstone & Norman.
 I.R. Irish Reports.
 J.P. Justice of the Peace.
 K.B. Law Reports, King's Bench Division.
 L. J. K.B. or
 L. J. Q.B. "Law Journal" Reports, King's (Queen's) Bench Division.

L.T. "Law Times" Reports.
 Q.B. Law Reports, Queen's Bench Division.
 R. Rennie.
 S.C. Sessions Cases, Scotland
 S.L.R. "Scottish Law Reporter."
 T.C. Official Reports of Tax Cases.
 T.L.R. "Times" Law Reports.
 W.R. "Weekly Reporter."

Aberdeen Commissioners of Supply v. Russell, (1890), 2 T. C., 643; 27 S. L. R., 759, p. 91
 Adam v. Maughan, (1889), 2 T. C., 541; 27 S. L. R., 64, p. 62
 Addie & Sons, *In re*, (1875), 1 T. C., 1; 12 S. L. R., 274, p. 257
 Agnew v. Ferguson, (1903), 40 S. L. R., 636, p. 105
 Aikin v. MacDonald's Trustees, (1894), 3 T. C., 306, p. 304
 Ainslie, *In re*, (1881), 1 T. C., 342, p. 343
 Alexandria Water Co. v. Musgrave (1883), 1 T. C., 521; 11 Q. B. D., 174; 52, L. J. Q. B., 349; 49, L. T., 287; 32, W. R., 146, p. 269
 Alianza Co. v. Bell, (1906), 5 T. C., 60 and 172; A. C., 18; 22., T. L. R. 94, p. 260
 Allan v. Gilchrist, (1884), 2 T. C., 52; 21 S. L. R., 471, p. 354
 Allan v. Hamilton Waterworks Commissioners, (1887), 2 T. C., 194; 24 S. L. R., 360, p. 170
 Allan v. Miller, (1889), 2 T. C., 446, 26 S. L. R., 491, p. 355
 Allan v. Thomson, (1884), 2 T. C., 52; 21 S. L. R., 471, p. 354
 American Thread Co. v. Joyce, (1913), 6 T. C., 1, 163; 108 L. T., 353; 29 T. L. R., 266, p. 220

Andrews v. Mayor, etc., of Bristol, (1892), 3 T. C., 236; 61 L. J. (N. S.), 715; 67 L. T., 618, p. 186
 Anglo-Continental Guano Works v. Bell, (1894), 3 T. C., 239; 70 L. T., 670, p. 262
 Apthorpe v. Peter Schoenhofen Brewing Co., Ltd., (1899), 4 T. C., 41; 80 L. T., 395, p. 223
 Argyll, Duke of, v. Commissioners of Inland Revenue, (1913), 30 T. L. R., 48, p. 1
 Arizona Copper Co. v. Smiles, (1891), 3 T. C., 149; 29 S. L. R., 134, p. 266
 Armitage v. Moore, (1900), 4 T. C., 199; 2 Q. B., 363; 69 L. J. Q. B., 614; 82 L. T., 618, p. 254
 Ashton Gas Co. v. Attorney-General, (1905), A. C., (1906), 10; 75 L. J. Ch., 1; 93 L. T., 676, p. 279
 Assets Co., Ltd. v. Forbes, (1897), 3 T. C., 542; 34 S. L. R., 486, p. 239
 Attorney-General v. Alexander and others, (1875), 31 L. T., 694, p. 212
 Attorney-General v. Black, (1871), 1 T. C., 52; 6 Ex., 308, p. 237
 Attorney-General v. Borrodaile, (1814), 1 Price, 148, p. 287

- Attorney-General v. Corporation of Exeter*, (1911), 5 T. C., 629; 104 L. T., 212; 1 K. B., 1092, p. 142
- Attorney-General v. Lancashire and Yorkshire Railway*, (1864), 10 L. T., 95, p. 314
- Attorney-General v. London County Council*, (1900), 4 T. C., 265; 2 Q. B., (1899), 226; 1 Q. B., (1900), 192; A. C., (1901), 26; 70 L. J. Q. B., 77; 83 L. T., 605; 49, W. R., 686, p. 99
- Attorney-General v. London County Council*, (1907), 5 T. C., 242; A. C., 131; 76 L. J. K. B., 454; 96 L. T., 481; 23 T. L. R., 390, p. 101
- Attorney-General v. McLean*, (1863), 8 L. T. 113, p. 15
- Attorney-General v. Scott*, (1873), 1 T. C., 55; 28 L. T. (N. S.), 303, p. 174
- Attorney-General v. Till*, (1909), 5 T. C., 440; 1 K. B., 694; A. C., (1910), 50, p. 130
- Bain v. Free Church of Scotland*, (1897), 3 T. C., 537; 34 S. L. R., 351, p. 184
- Banks v. Glasgow and South Western Railway Co.*, (1880), 1 T. C., 325; 7 R. 1161, p. 352
- Bartholomay Brewing Co. v. Wyatt*, (1893), 3 T. C., 213; 2 Q. B., 499; 62 L. J. Q. B., 525; 69 L. T., 561; 42 W. R., 173, p. 222
- Beadel v. Pitt*, (1865), 11 L. T., 592, p. 108
- Beaumont v. Bowers*, (1900), 4 T. C., 189; 2 Q. B., 204; 69 L. J. Q. B., 600; 48 W. R., 557, p. 312
- Bebb v. Bunny*, (1854), 1 Jurist Reports, 203, p. 94
- Bell v. Gribble*, (1903), 4 T. C., 522; 1 K. B., 517; 72 L. J. K. B., 242; 88 L. T. 186; 51 W. R., 457, p. 312
- Bell v. National Provincial Bank of England, Ltd.*, (1904), 5 T. C., 1; 1 K. B., 149; 73 L. J. K. B., 142; 90 L. T., 2; 52 W. R., 406, p. 289
- Berry v. Farrow & Searcy*, (1913), 30 T. L. R., 129; (1914), 1 K. B., 632, p. 25
- Birmingham, In re Corporation of*, (1875), 1 T. C., 26, p. 174
- Blake v. Imperial Brazilian Railway*, (1884), 2 T. C., 58; 1 T. L. R., 68, p. 90
- Blake v. Mayor of London*, (1886), 2 T. C., 209; 18 Q. B. D., 437; 19 Q. B. D., 79; 56 L. J. Q. B., 424, p. 185
- Blakiston v. Cooper*, (1906), 5 T. C., 347; 1909, A. C., 104, p. 311
- Boden & Co. v. Overseers of Chard*, (1886), 6 T. L. R., 431, p. 160
- Bonner v. Basset Mines, Ltd.*, (1913), 6 T. C., 146; 108 L. T., 764, p. 261
- Boschoek Proprietary Co., Ltd., v. Fuke*, (1906), 94 L. T., 398; 75 L. J. Ch., 261, p. 307
- Bowers v. Harding*, (1891), 3 T. C., 22; 1 Q. B., 560; 60 L. J. Q. B., 474; 64 L. T., 201; 39 W. R., 558, p. 317
- Bowles v. Attorney-General*, (1911), 105 L. T., 870; 81 L. J. Ch., 155, p. 331
- Bowles v. Bank of England*, (1912), 6 T. C., 136; (1913), 1 Ch., 57; 82 L. J. Ch., 124; 108 L. T., 95; 29 T. L. R., 42, p. 10
- Bradford Grammar School v. Northwood*, (1905), 5 T. C., 124, p. 340
- Bray v. Brothers*, (1897), 3 T. C., 550; 13 T. L. R., 325, p. 306
- Bray v. Justices of Lancashire*, (1889), 2 T. C., 426; 22 Q. B. D., 484; 37 W. R., 392, p. 63
- Brebner, In re*, (1874), 1 T. C., 21, p. 368
- Brice v. Northern Assurance Co., Ltd.*, (1913), A. C., 610; 82 L. J. K. B., 1,221; 109 L. T., 483; 29 T. L. R., 757, p. 85
- Brice v. Ocean Accident Guarantee Corporation, Ltd.*, (1913), A. C., 610; 82 L. J. K. B., 1,221; 109 L. T., 483; 29 T. L. R., 757, p. 85
- Brickwood & Co. v. Reynolds*, (1898), 3 T. C., 600; 1 Q. B., 95; 67 L. J. Q. B., 26, p. 275
- British India Steam Navigation Co. v. Leslie*, (1900), 4 T. C., 257; 17 T. L. R., 104, p. 67
- British and Foreign Bible Society, In re* (1875), 1 T. C., 13, p. 337

- British Institute of Preventive Medicine *v.* Styles, (1895), 3 T. C., 376; 11 T. L. R., 432, *p.* 344
- British Linen Co. *v.* Forbes, (1892), 3 T. C., 198, *p.* 355
- Brooks *v.* Inland Revenue, (1913), 3 K. B., 398; (1914), 1 K. B., 579; 82 L. J. K. B., 1086; 109 L. T., 363; 29 T. L. R., 755; *p.* 327
- Broughton and Plas Power Coal Co., Ltd. *v.* Kirkpatrick, (1884), 2 T. C., 69; 14 Q. B. D., 491; 54 L. J. Q. B., 268; 33 W. R., 278, *p.* 165
- Brown *v.* Burt, (1911), 5 T. C., 667; 81 L. J. K. B., 1, *p.* 210
- Brown (Surveyor of Taxes) *v.* J. Smith, (1901), 4 T. C., 435; 39 S. L. R., 20; 4 F. 31, *p.* 63
- Brown *v.* Watt, (1886), 2 T. C., 143; 23 S. L. R., 403, *p.* 282
- Browne *v.* Furtado, (1903), 4 T. C., 537; 19 T. L. R., 266; 1 K. B., 723, *p.* 359
- Brown's Trustees *v.* Hay, (1897), 3 T. C., 598; 35 S. L. R., 340, *p.* 148
- Bruce *v.* Burton, (1901), 4 T. C., 399; 85 L. T., 227, *p.* 77
- Burnley Steamship Co. *v.* Aikin, (1894), 3 T. C., 275; 31 S. L. R., 803, *p.* 65
- Calcutta Jute Mills Co., Ltd. *v.* Nicholson, (1876), 1 T. C., 83; 1 Ex D., 437; 45 L. J. Ex., 821; 35 L. T., 275; 25 W. R., 71; *p.* 213
- Caledonian Railway Co. *v.* Banks, (1880), 1 T. C., 487; 18 S. L. R., 85, *p.* 64
- Californian Copper Syndicate *v.* Harris, (1904), 5 T. C., 159; 6 F., 894; 41 S. L. R., 691, *p.* 240
- Calvert *v.* Walker, (1899), 4 T. C., 79; 68 L. J. Q. B., 761, *p.* 29
- Campbell *v.* Inland Revenue, (1879), 1 T. C., 234; 17 S. L. R., 23, *pp.* 158, 336
- Campbell, *In re* (1880), 1 T. C., 255; 7 R., 579; 17 S. L. R., 407, *p.* 368
- Carlisle and Silloth Golf Club *v.* Smith, (1913), 6 T. C., 48, 198; 3 K. B., 75; 82 L. J. K. B., 837; 108 L. T., 785, *p.* 245
- Cawse *v.* Lunatic Hospital, Nottingham, (1891), 3 T. C., 39; 1 Q. B., 585; 60 L. J. Q. B., 485; 65 L. T., 155; 39 W. R., 461, *pp.* 184, 338
- Cesena Sulphur Co., Ltd. *v.* Nicholson, (1876), 1 T. C., 88; 1 Ex. D., 428; 45 L. J. Ex., 821; 35 L. T., 275; 25 W. R., 71, *p.* 213
- Chadwick *v.* Pearl Life Insurance Co., Ltd., (1905), 2 K. B., 507, *p.* 92
- Chapman *v.* Royal Bank of Scotland, (1881), 1 T. C., 363; 7 Q. B. D., 136; 50 L. J. Q. B., 670; 45 L. T., 215; 30 W. R., 81, *p.* 347
- Charlton *v.* Commissioners of Inland Revenue, (1890), 27 S. L. R., 647, *p.* 44
- Charterhouse School *v.* Gayler, (1896), 3 T. C., 435; 1 Q. B., 437; 65 L. J. Q. B., 233; 74 L. T., 171; 44 W. R., 410, *p.* 358
- Charterhouse School *v.* Lamarque, (1890), 2 T. C., 611; 25 Q. B. D., 121; 59 L. J. Q. B., 495; 62 L. T., 907; 38 W. R., 776, *p.* 339
- Cheape *v.* Kinmont, (1888), 2 T. C., 418; 16 R., 144; 26 S. L. R., 103, *p.* 358
- City of Dublin Steam Packet Co., Ltd. *v.* O'Brien, (1912), 6 T. C., 101, *p.* 255
- City of London Contract Corporation *v.* Styles, (1887), 2 T. C., 239; 4 T. L. R., 51, *pp.* 99, 266
- Clark (Mary) Home, Trustees of, *v.* Anderson, 5 T. C., 48, *pp.* 185, 339
- Clayton *v.* Newcastle-under-Lyme Corporation, (1888), 2 T. C., 416, *p.* 168
- Clerical, Medical and General Life Assurance Society *v.* Carter, (1889), 2 T. C., 437; 22 Q. B. D., 444; 58 L. J. Q. B., 224, *p.* 86
- Clerk *v.* British Linen Co., (1885), 2 T. C., 95; 12 R., 1133; 32 S. L. R., 750, *p.* 354
- Clerk *v.* Commissioners of Supply for Dumfries, (1880), 1 T. C., 281; 17 S. L. R., 774, *p.* 62
- Clifton College *v.* Thompson, (1896), 3 T. C., 430; 1 Q. B., 432; 65 L. J. Q. B., 231; 74 L. T., 168; 44 W. R., 410, *p.* 359
- Colquhoun *v.* Brooks, (1889), 2 T. C., 490; 14 A. C., 493; 59,

- L. J. Q. B., 53; 59, L. T., 850; 38, W. R., 289, *p.* 221
- Colquhoun *v.* Heddon, (1890), 2 T. C., 621; 25 Q. B. D., 129; 59 L. J. Q. B., 465, *p.* 119
- Coltness Iron Co. *v.* Black, (1881), 1 T. C., 287; 6 A. C., 395; 51 L. J. Q. B., 626; 45, L. T., 145; 29 W. R., 717, *p.* 258
- Commercial Bank of Scotland, *In re*, (1879), 1 T. C., 222, *p.* 351
- Commissioners for Special Purposes *v.* Pemsel, (1891), 3 T. C., 53; A. C., 531; 61 L. J. Q. B., 265, *p.* 41
- Commissioners of Inland Revenue *v.* Forrest, (1890), 3 T. C., 117; 14 A. C., 334; 60 L. J. Q. B., 281; 63 L. T., 36; 39 W. R., 33, *p.* 188
- Cook *v.* Knott, (1887), 2 T. C., 246; 4 T. L. R., 164, *p.* 318
- Coomber *v.* Justices of Berkshire, (1883), 2 T. C., 1; 9 A. C., 61; 53 L. J. Q. B., 239; 50 L. T., 405; 32 W. R., 525, *p.* 61
- Cooper, *In re*, (1912), 105 L. T., 273; 80 L. J. K. B.; 2 K. B., 550, *p.* 98
- Cooper *v.* Cadwalader, (1904), 5 T. C., 101; 12 S. L. R., 449, *p.* 210
- Cooper (Sir Daniel) *v.* Rose, 5 T. C., 288; 97 L. T., 337, *p.* 361
- Corke *v.* Brims, (1883), 1 T. C., 531; 10 R., 1128; 20 S. L. R., 778, *p.* 353
- Corke *v.* Fry, (1895), 3 T. C., 335; 32, S. L. R., 341, *p.* 310
- Cotton's Trustees *v.* Farmer, (1913), *p.* 356
- Cowan and Strachan, *In re*, (1880), 1 T. C., 245; 17 S. L. R., 314, *p.* 353
- Crookston Bros. *v.* Furtado, (1910), 5 T. C., 602, *p.* 234
- Cunard Steamship Co. *v.* Coulson, (1899), 4 T. C., 63; 1 Q. B., 865; 68, L. J. Q. B., 554, *p.* 66
- Curtis *v.* Old Monkland Conservative Association, (1906), 5 T. C., 189; A. C., 86; 7 F., 119; 75 L. J., 31; 94 L. T., 7; 43 S. L. R., 119, *p.* 3
- Dalrymple *v.* Dalrymple, (1902), 39 S. L. R., 348, *p.* 109
- Darnagavil Coal Co., Ltd. *v.* Francis, (1913), *p.* 285
- Davies *v.* Craven, (1907), 2 Ch., 448; 97 L. T., 475, *p.* 97
- De Beers Consolidated Mines, Ltd. *v.* Howe, (1906), 5 T. C., 198; A. C., 455, 75, L. J. K. B., 858; 95 L. T., 221, *p.* 218
- Delage and another *v.* Nugget Polish Co., Ltd., (1905), 21 T. L. R., 454; 92 L. T., 682, *p.* 96
- Denver Hotel Co., Ltd. *v.* Andrews, (1895), 3 T. C., 356; 11 T. L. R., 238; 43 W. R., 339, *p.* 215
- De Peyer *v.* the King, (1909), 100 L. T., 256, *p.* 113
- Dillon *v.* Corporation of Haverfordwest, (1891), 3 T. C., 31; 1 Q. B., 575; 60 L. J. Q. B., 477; 64 L. T., 202; 39 W. R., 478, *p.* 168
- Drummond *v.* Collins, (1914), 3 K. B., 583; 109 L. T., 631, *p.* 303
- Dublin Corporation *v.* McAdam, (1887), 2 T. C., 387; L. R. Ireland, 20 Ex. D., 497, *p.* 170
- Duncan's Executors *v.* Farmer, (1909), 5 T. C., 417; 1909, S. C., 1212, *p.* 244
- Edinburgh Life Assurance Co. *v.* Lord Advocate, (1910), 5 T. C., 472; A. C., 143, *p.* 252
- Edinburgh Southern Cemetery Co. *v.* Kinnmont, (1889), 2 T. C., 516; 17 R., 154; 27 S. L. R., 71, *p.* 175
- Edmonds *v.* Eastwood, (1858), 2 H. & N., 811, *p.* 157
- Egyptian Hotels, Ltd. *v.* Mitchell, (1914), 6 T. C., 152; 108 L. T., 558; 29 T. L. R., 109, *p.* 219
- Equitable Life Assurance Society of United States *v.* Bishop, (1900), 4 T. C., 147; 1 Q. B., 177; 69 L. J. Q. B., 252; 81 L. T., 693; 48 W. R., 341, *p.* 252
- English Crown Spelter Co., Ltd. *v.* Baker (1908), 5 T. C., 327; 99 L. T., 353, *p.* 261
- Erichsen *v.* Last, (1881), 1 T. C., 351; 4 T. C., 422; 8 Q. B. D., 414; 51 L. J. Q. B., 86; 45 L. T., 703; 30 W. R., 301, *p.* 229
- Farmer *v.* Scottish North American Trust, Ltd., 5 T. C., 693; A. C., 118; 105 L. T., 833; 28 T. L. R., 142, *p.* 263

- Farmer *v.* Scottish Widows' Fund Life Assurance Society, (1909), 5 T. C., 502; 46 S. L. R., 993, *p.* 300
- Farrell *v.* Sunderland Steamship Co., Ltd., (1903), 4 T. C., 605, 88 L. T., 741, *p.* 287
- Ferguson (Alexander) & Co., Ltd. *v.* Aikin, (1898), 4 T. C., 36, *p.* 288
- Foley *v.* Fletcher, (1858), 28 L. J. Ex., 100, *p.* 92
- Forbes *v.* Scottish Widows' Fund and Life Assurance Society, (1895), 3 T. C., 449; 23 R., 322; 33 S. L. R., 228, *p.* 296
- Forbes *v.* Scottish Provident Institution (1895), 3 T. C., 443; 23 R., 322; 33 S. L. R., 228, *p.* 296
- Forbes *v.* Standard Life Assurance Co., (1894), 3 T. C., 268, 21 R., 820; 31 S. L. R., 663, *p.* 346
- Forder *v.* Handyside, (1876), 1 T. C., 65; 1 Ex. D., 233; 35 L. T., 62; 24 W. R., 764, *p.* 258
- Foster *v.* Athenaeum Newsroom and Library (Liverpool) (1907), 5 T. C., 279, *p.* 360
- Frank Jones Brewing Co., Ltd. *v.* Apthorpe, (1898), 4 T. C., 6; 15 T. L. R., 113, *p.* 217
- Free Church of Scotland *v.* Bain, (1897), 3 T. C., 530; 34 S. L. R., 374, *p.* 363
- Furtado *v.* Cardonald Feuing Co., Ltd., (1906), S. C., 36; 44 S. L. R., 66, *p.* 246
- Furtado *v.* City of London Brewery Co., Ltd., (1913), [1914], 1 K. B., 709; 30 T. L. R., 177, *p.* 32
- Galashiels Provident Building Society *v.* Newlands, (1893), 30 S. L. R., 730, *p.* 104.
- Gaunt *v.* Inland Revenue, (1913), 3 K. B., 395; 82 L. J. K. B., 1131; 109 L. T., 555, *p.* 327
- General Accident Fire and Life Assurance Corporation *v.* M'Gowan, (1907), 5 T. C., 308; 44 S. L. R., 792, *p.* 247
- General Hydraulic Power Co., Ltd. *v.* Hancock, (1913), *p.* 270
- Gifford, Fox & Co. *v.* Overseers of Chard, (1886), 6 T. L. R., 431; 63 L. T., 249, *p.* 160
- Gilbertson *v.* Fergusson, (1881), 1 T. C., 501; 7 Q. B. D., 562; 46 L. T., 10, *p.* 302
- Gillatt and Watts *v.* Colquhoun, (1884), 2 T. C., 76; 33 W. R., 258, *p.* 271
- Glasgow Coal Exchange Co., Ltd., *In re* (1879), 1 T. C., 211; 6 R., 850; 16 S. L. R., 457, *p.* 342
- Glasgow Corporation Gas Commissioners, *In re*, (1876), 1 T. C., 122, *p.* 168
- Glasgow Corporation Water Commissioners, *In re*, (1875), 1 T. C., 28; 12 S. L. R., 466, *p.* 169
- Gleadow *v.* Leatham, (1883), 48 L. T., 264; 22 Ch. D., 269, *p.* 108
- Goerz & Co., Ltd. *v.* Bell, (1904), 2 K. B., 136; 73 L. J. K. B., 448, *p.* 217
- Goslings and Sharpe *v.* Blake, (1889), 2 T. C., 450; 23 Q. B. D., 324; 58 L. J. Q. B., 446; 37 W. R., 774, *p.* 95
- Gould *v.* Curtis, (1913), 3 K. B., 84; 82 L. J. K. B., 802; 108 L. T., 779; 29 T. L. R., 469, *p.* 119
- Grainger & Sons *v.* Gough, (1896), 3 T. C., 311 and 462; A. C., 325; 65 L. J. Q. B., 410; 74 L. T., 435; 44 W. R., 561, *p.* 232
- Granite Supply Association *v.* Kitton, (1905), 5 T. C., 168; 43 S. L. R., 65; 8 F., 55, *p.* 267
- Grant *v.* Langston, (1900), 4 T. C., 205; A. C., 383; 69 L. J. P. C., 66; 82 L. T., 629; 37 S. L. R., 691; 25 R., 1040, *p.* 348
- Gresham Life Assurance Society *v.* Bishop, (1902), 4 T. C., 464; A. C., 287; 71 L. J. K. B., 618; 86 L. T., 693; 50 W. R., 593, *p.* 298
- Gresham Life Assurance Society *v.* Styles, (1892), 2 T. C., 633; 3 T. C., 185; A. C., 309; 62 L. J. Q. B., 41; 67 L. T., 479; 41 W. R., 270, *p.* 250
- Grimes *v.* Lethem, (1898), 3 T. C., 622, *p.* 283
- Grinter *v.* Fleming, (1900), 4 T. C., 239; 2 Q. B., 735; 69 L. J. Q. B., 875; 83 L. T., 347; 49 W. R., 33, *p.* 367
- Grove *v.* Elliots and Parkinson, (1896), 3 T. C., 481, *p.* 217
- Grove *v.* Young Men's Christian Association, (1903), 4 T. C., 613; 67 J. P., 279; 88 L. T., 696, *p.* 255

- Guest, Keen & Nettlefolds, Ltd.
v. Fowler, (1910), 5 T. C., 511;
1 K. B., 713; 26 T. L. R., 337,
p. 280
- Hancock v. Gillard, (1907), 1 K. B.,
47; 76 L. J. K. B., 20; 95 L. T.,
680, p. 180
- Hargreaves Ltd., *In re* Joseph,
(1900), 4 T. C., 173; 1 Ch. 347;
69 L. J., 183; 82 L. T., 132;
48 W. R., 241, p. 148
- Harris v. Corporation of Irvine,
(1900), 4 T. C., 221; 37 S. L. R.,
799, p. 171
- Harris v. Edinburgh Corporation,
(1907), 5 T. C., 271; 44 S.
L. R., 873; 15 S. L. T. R., 233,
p. 161
- Herbert v. McQuade, (1902),
4 T. C., 489; 2 K. B., 631;
71 L. J. K. B., 884; 87, L. T.,
349, p. 308
- Hesketh v. Bray, (1888), 2 T. C.,
380; 21 Q. B. D., 444; 57
L. J. Q. B., 633; 37 W. R., 22
p. 182
- Highland Railway Co. v. Balder-
ston, (1889), 2 T. C., 485; 26
S. L. R., 657, p. 268
- Highland Railway v. Special Com-
missioners, (1885), 2 T. C., 151;
23 S. L. R., 116, p. 143
- Hill v. Gregory, (1912), 6 T. C., 39;
2 K. B., 61; 81 L. J. K. B., 730;
106 L. T., 603, p. 166
- Hill v. Inland Revenue, (1912),
S. C., 1,246; 49 S. L. R., 960,
p. 327
- Hillman v. Ankerson, (1906), p. 351
- Hoddinott v. Home and Colonial
Stores, Ltd., (1896), 3 T. C.,
421; 1 Q. B., 169; 65 L. J. Q. B.,
291; 74 L. T., 79; 44 W. R.,
285, p. 348
- Holborn Viaduct Land Co., Ltd.
v. Regina, (1887), 2 T. C., 228,
p. 28
- Hudson v. Gribble, (1903), 4 T. C.,
522; 1 K. B., 517; 72 L. J. K. B.,
242; 88 L. T., 186, p. 313
- Hudson's Bay Co., Ltd. v. Stevens,
(1909), 5 T. C., 424; 25 T. L. R.,
709, p. 243
- Humphrey v. Peare, (1913), 6 T. C.,
201; 2 I. R., 462, p. 118
- Hunter v. Attorney-General, (1904),
5 T. C., 13; A. C., 161; 73
L. J. K. B., 381; 90 L. T., 325,
p. 119
- Imperial Continental Gas Associa-
tion v. Nicholson, (1877), 1 T. C.,
138; 37 L. T., (N. S.), 717,
p. 214
- Imperial Fire Insurance Co. v.
Wilson, (1876), 1 T. C., 71;
35 L. T., 271, p. 246
- Inland Revenue v. Farie, (1878),
16 S. L. R., 189, p. 361
- Inland Revenue v. Western Steam-
ship Co., Ltd., (1907), 44 S. L. R.,
715, p. 268
- Jardine v. Gillespie, (1906), 5 T. C.,
263; 44 S. L. R., 136; 14
S. L. T. R., 556, p. 45
- Jepson v. Gribble, (1876), 1 T. C.,
78; 1 Ex. D., 151; 45 L. J. Ex.,
502; 34 L. T., 493; 24 W. R.,
460, p. 337
- John Hall, junr., & Co. v. Rickman,
(1905); (1906), 1 K. B., 311;
94 L. T., 224, p. 67
- Jones v. The Cwmorthin Slate Co.,
(1879), 1 T. C., 267; 5 Ex. D.,
93; 49 L. J., Ex., 210; 41 L. T.,
575; 28 W. R., 237, p. 165
- King v. Brixton Income Tax Com-
missioners, (1913), 6 T. C., 195;
29 T. L. R., 712, p. 24
- King v. Clerkenwell Income Tax
Commissioners, (1901), 4 T. C.,
549; 2 K. B., 879; 17 T. L. R.,
744, p. 207
- King v. Kensington Income Tax
Commissioners, (1913), 3 K. B.,
870, p. 21
- King v. Special Commissioners (*ex
parte* Essex Hall), (1911), 5 T. C.,
636; 2 K. B., 434, p. 189
- King v. Special Commissioners (*ex
parte* University College of N.
Wales), (1909), 5 T. C., 408; 24
T. L. R., 491; 100 L. T., 585,
p. 42
- King's Lynn Harbour Moorings
Commissioners, *In re*, (1875),
1 T. C., 23, p. 172
- Knight v. Manley, (1905), 5 T. C.,
82, 21 T. L. R., 203, p. 350
- Knowles v. McAdam, (1877), 1
T. C., 161; 3 Ex. D., 23, p.
259

- Kodak Ltd. *v.* Clark, (1903),
4 T. C., 549; 1 K. B., 505;
72 L. J. K. B., 369; 88
L. T., 155; 51 W. R., 459, *p.*
225
- Laing *v.* Overseers of Bishopswear-
mouth, (1878), 37 L. T., 781;
3 Q. B. D., 299, *p.* 158
- Lamb *v.* Brewster, (1879), 40 L. T.,
537; 4 Q. B. D., 607; 48 L. J.
Q. B., 421, *p.* 108
- Lambton *v.* Kerr, (1895), 3
T. C., 380; 2 Q. B., 233; 64
L. J. Q. B., 749; 43 W. R., 541,
p. 358
- Langston *v.* Glasson, (1891), 3
T. C., 46; 1 Q. B., 567; 60
L. J. Q. B., 356; 65 L. T., 159;
39 W. R., 476, *p.* 315
- Lanston Monotype Corporation *v.*
Anderson, (1911), 5 T. C., 675;
2 K. B., 1019, *p.* 125
- Last *v.* London Assurance Cor-
poration, (1885), 2 T. C., 100;
10 A. P., 438; 55 L. J. Q. B.,
92; 53 L. T., 634; 34 W. R.,
233, *p.* 248
- Leeds Permanent Benefit Building
Society *v.* Mallandaine, (1897),
3 T. C., 577; 2 Q. B., 402;
76 L. T., 650; 66 L. J. Q. B.,
813, *p.* 87
- Leith, Hull and Hamburg Steam
Packet Co. *v.* Bain, (1897), 3
T. C., 560, *p.* 66
- Leith, Hull and Hamburg Steam
Packet Co. *v.* Musgrave, (1899),
4 T. C., 80; 36 S. L. R., 745;
1 F., 1117, *p.* 66
- Linen and Woollen Drapers' Insti-
tution *v.* Commissioners of In-
land Revenue, (1887), 58 L. T.,
949, *p.* 42
- Liverpool and London and Globe
Insurance Co., Ltd. *v.* Bennett,
(1913), A. C., 610; 82 L. J. K. B.,
1221; 109 L. T., 483; 29
T. L. R., 757, *p.* 85
- Lloyd *v.* Sulley, (1884), 2 T. C.,
37; 21 S. L. R., 482; 11 R., 687,
p. 208
- Lochgelly Iron Co. *v.* Crawford,
(1913), 6 T. C., 267, *p.* 281
- London Bank of Mexico *v.* Apthorpe
(1891), 3 T. C., 143; 2 Q. B.,
378; 60 L. J. Q. B., 653; 39
W. R., 564, *p.* 214
- London County Council *v.* Owen
Cook, (1905), 5 T. C., 173;
1 K. B., 278, *p.* 370
- London County Council *v.* Edwards,
(1909), 5 T. C., 383; 25 T. L. R.,
319, *p.* 68
- London County Council *v.* Grove,
(1896), 3 T. C., 508; 45 W. R.,
279, *p.* 86
- London Library *v.* Carter, (1890),
2 T. C., 594; 62 L. T., 466;
38 W. R., 478, *p.* 343
- London and Westminster Bank *v.*
Smith, (1902), 4 T. C., 503;
87 L. T., 244, *p.* 349
- Lord-Advocate *v.* City of Edin-
burgh, (1903), 4 T. C., 627;
5 F., 875; 41 S. L. R. I., *p.*
101
- Lord-Advocate *v.* Forth Bridge
Railway Co., (1890), 3 T. C., 1;
28 S. L. R., 576, *p.* 99
- Lord-Advocate *v.* General Com-
missioners of Income Tax for
Cuninghame Division of Ayr-
shire, (1895), 3 T. C., 395;
32 S. L. R., 709, *p.* 323
- Lord-Advocate *v.* Gibb, (1906),
5 T. C., 194; 43 S. L. R., 674,
p. 7
- Lord-Advocate *v.* Magistrates of
Edinburgh, (1905), 42 S. L. R.,
691, *p.* 98
- Lord-Advocate *v.* McLaren, (1905),
5 T. C., 110; 42 S. L. R., 762;
7 F., 984, *p.* 134
- Lord-Advocate *v.* A. B. or Sawers,
(1897), 3 T. C., 617; 35 S. L. R.,
190, *p.* 130
- Lothian *v.* Macrae, (1884), 2 T. C.,
65; 22 S. L. R., 219; 12 R., 336,
p. 44
- Lovat *v.* Leeds, (1862), 6 L. T., 307;
p. 107
- Luna *v.* School for Indigent Blind
at Liverpool, (1898), 2 Ch., 669;
79 L. T., 68, *p.* 108
- Macpherson *v.* Moore, (1912), 6
T. C., 107; 49 S. L. R., 979,
p. 236
- Manchester, Lord Mayor, &c., of,
v. James Sugden, (1903), 4 T. C.,
595; 2 K. B., 171; 72 L. J. K. B.,
746; 88 L. T., 679; 51 W. R.,
627, *p.* 77
- Manchester (Mayor of) *v.* McAdam,
(1895), *p.* 186

- Manchester (Mayor of) *v.* McAdam, (1896), 3 T. C., 325 and 491; A. C., 500; 65 L. J. Q. B., 672; 75 L. T., 229, *p.* 186
- Maple & Co., Ltd. *v.* Wilson, (1901), 4 T. C., 390; 85 L. T., 229; 49 W. R., 670, *p.* 337
- Matthews *v.* Cork County Council, (1910), 2 I. R., 521, *p.* 90
- Maughan *v.* Free Church of Scotland, (1893), 3 T. C., 207; 30 S. L. R., 666, *p.* 189
- McDougall *v.* Campbell, (1899), 4 T. C., 166; 2 F., 244; 37 S. L. R., 181, *p.* 364
- McDougall *v.* Sutherland, (1894), 3 T. C., 261; 31 S. L. R., 630, *p.* 309
- McGregor *v.* Macfarlane, (1889), 2 T. C., 435; 26 S. L. R., 334, *p.* 182
- Menzies, *In re* William, (1877), 1 T. C., 148; 15 S. L. R., 285, *p.* 322
- Merchiston Steamship Co., Ltd. *v.* Turner, (1910), 5 T. C., 520; 2 K. B., 923, *p.* 290
- Mersey Docks and Harbour Board *v.* Lucas, (1883), 1 T. C., 385; 2 T. C., 25; 8 A. C., 891; 53 L. J. Q. B., 4; 49 L. T., 781; 32 W. R., 34, *p.* 173
- Middlesbrough, Redcar, etc., Building Society, *Re*; *ex parte* Wythes, (1885), 53 L. T., 492, *p.* 104
- Middleton, *In re*, (1876), 1 T. C., 109; 13 S. L. R., 378, *p.* 192
- Miller *v.* Glasgow Corporation Water Commissioners, (1886), 2 T. C., 131; 23 S. L. R., 285, *p.* 169
- Moore *v.* Stewarts & Lloyds, (1906), 43 S. L. R., 811, *p.* 280
- Morant *v.* Wheal Grenville Mining Co., (1894), 3 T. C., 298; 71 L. T., (N. S.), 758, *p.* 260
- Mosse *v.* Salt, (1863), 32 L. J. Ch., 756, *p.* 94
- Mostyn (Lord) *v.* London, (1895), 3 T. C., 294; 1 Q. B., 170, *p.* 164
- Muat *v.* Stewart, (1890), 2 T. C., 601; 17 R., 371; 27 S. L. R., 294, *p.* 344
- Mullingar Rural District Council *v.* Rowles, (1912), 6 T. C., 85; 2 I. R., 44, *p.* 171
- Murdock *v.* Lethem, (1904), 5 T. C., 76; 42 S. L. R., 82, *p.* 368
- Musgrave *v.* Dundee Royal Lunatic Asylum, (1895), 3 T. C., 363; 32 S. L. R., 579, *p.* 338
- Musgrave *v.* Magistrates and Town Council of Dundee, (1897), 3 T. C., 552; 34 S. L. R., 702, *p.* 187
- Mylam *v.* Market Harborough Advertiser Co., Ltd., (1905), 5 T. C., 95; 1 K. B., 708; 74 L. J. K. B., 205; 92 L. T., 94; 53 W. R., 478; 21 T. L. R., 201, *p.* 3
- National Bank of Wales, Ltd., *In re*, (1898), 2 Ch. 629, *p.* 111
- Needham *v.* Bowers, (1888), 2 T. C., 360; 21 Q. B. D., 437; 37 W. R., 125, *pp.* 184, 340
- New Zealand Shipping Co., Ltd. *v.* Stephens, (1907), 5 T. C., 533; 24 T. L. R., 172, *p.* 218
- Nichols *v.* Malim, (1905), 5 T. C., 183; 1 K. B., (1906), 272, *p.* 350
- Nisbet *v.* M'Innes, Mackenzie and Lochhead, (1884), 2 T. C., 55; 11 R., 1095; 21 S. L. R., 740, *p.* 354
- Nizam's State Railway *v.* Wyatt, (1890), 2 T. C., 584; 24 Q. B. D., 548; 59 L. J. Q. B., 430; 62 L. T., 765, *p.* 90
- Nobel Dynamite Trust Co. *v.* Wyatt, (1893), 3 T. C., 224; 2 Q. B. D., 499; 62 L. J. Q. B., 525; 69 L. T., 561; 42 W. R., 173, *p.* 222
- Norfolk (Duke of) *v.* Lamarque, (1890), 2 T. C., 579; 24 Q. B. D., 485; 59 L. J. Q. B., 119; 62 L. T., 153; 38 W. R., 382, *p.* 164
- Northern Assurance Co. *v.* Russell, (1889), 2 T. C., 571; 26 S. L. R., 330, *p.* 238
- Norwich Union Fire Insurance Co. *v.* Magee, (1896), 3 T. C., 457; 73 L. T., 733; 44 W. R., 384, *p.* 84
- Ogilvie *v.* Kitton, (1908), 5 T. C., 338; 10 F., 1003, *p.* 226
- Paddington Burial Board *v.* Commissioners of Inland Revenue, (1884), 2 T. C., 46; 13 Q. B. D., 9; 53 L. J. Q. B., 224; 50 L. T., 211; 32 W. R., 551, *p.* 174

- Paisley Cemetery Co. *v.* Reith, (1898), 4 T. C., 1; 35 S. L. R., 947, *p.* 176
- Partridge *v.* Mallandaine, (1886), 2 T. C., 179; 18 Q. B. D., 276; 56 L. J. Q. B., 251; 56 L. T., 203; 35 W. R., 276, *p.* 238
- Peninsular and Oriental Steam Navigation Co. *v.* Leslie, (1900), 4 T. C., 177; 79 L. T., 118; 82 L. T., 137, *p.* 67
- Pickles *v.* Foster, (1913), 6 T. C., 131; 1 K. B., 174; 82 L. J. K. B., 121; 108 L. T., 106; 29 T. L. R., 112, *p.* 319
- Pommery and Greno *v.* Apthorpe, (1886), 2 T. C., 182; 56 L. J. Q. B., 155; 56 L. T., 24; 35 W. R., 307, *p.* 231
- Poole Corporation *v.* Bournemouth Corporation, (1910), 103 L. T., 828, *p.* 97
- Portobello Town Council *v.* Sulley, (1890), 2 T. C., 647; 27 S. L. R., 863, *p.* 176
- Poynting *v.* Faulkner, (1905), 5 T. C., 145; 21 T. L. R., 428 and 560; 93 L. T., 367; *p.* 311
- Pretoria-Pietersburg Railway Co. *v.* Elwood, (1908), 98 L. T., 741, *p.* 245
- Psalms & Hymns, Trustees of *v.* Whitwell, (1890), 3 T. C., 7; 7 T. L. R., 164, *p.* 253
- Quarter Sessions of Glamorgan *v.* Wilson, (1910), 5 T. C., 537; 1 K. B., 725, *p.* 89
- Rattray *v.* Sturmeys Motors, Ltd., (1913), 1 Ch. 16; 107 L. T., 523, *p.* 106
- Regina *v.* Special Commissioners of Income Tax, (1893), 3 T. C., 289, *p.* 29
- Reading *v.* Chew, (1898), 3 T. C., 625, 78 L. T., 681, *p.* 197
- Reid's Brewery Co., Ltd. *v.* Male, (1891), 3 T. C., 279; 2 Q. B. D., 1; 60 L. J. Q. B., 340; 64 L. T., 294; 39 W. R., 459, *p.* 274
- Reith *v.* Westminster School, (1913), 6 T. C., 166; 3 K. B., 129; 82 L. J. K. B., 861; 108 L. T., 701; 29 T. L. R., 482, *p.* 361
- Religious Tract and Book Society of Scotland *v.* Forbes, (1896), 3 T. C., 415; 33 S. L. R., 289, *p.* 254
- Revell *v.* Directors of Elworthy & Co., Ltd., (1890), 3 T. C., 12, *p.* 319
- Revell *v.* Edinburgh Life Insurance Company, (1906), 5 T. C., 221, *p.* 88
- Revell *v.* Scott, (1895), 3 T. C., 403; 32 S. L. R., 585, *p.* 192
- Rex *v.* City of London Income Tax Commissioners, (1904), 91 L. T., 94, *p.* 78
- Rex *v.* Offlow Income Tax Commissioners, (1911), 27 T. L. R., 353, *p.* 23
- Rex *v.* Chew and others, (1894), 3 T. C., 289; 71 L. T., 541; 11 T. L. R., 1, *p.* 29
- Rhymney Iron Co. *v.* Fowler, (1896), 3 T. C., 476; 2 Q. B., 79; 65 L. J. Q. B., 524; 44 W. R., 651, *p.* 279
- Rickett *v.* Rickett (*In re Sharpe*), (1906), 1 Ch. 793; 95 L. T., 522, *p.* 106
- Riley *v.* Read, (1879), 1 T. C., 217; 4 Ex. D. 100; 48 L. J. Ex., 437; 27 W. R., 414, *p.* 325
- Rogers *v.* Inland Revenue, (1879), 1 T. C., 225; 16 S. L. R., 682; 6 R., 1109, *p.* 208
- Royal College of Surgeons of England *v.* Commissioners of Inland Revenue, (1899), 4 T. C., 344; 1 Q. B., 871; 68 L. J. Q. B., 613, *p.* 188
- Royal Insurance Co. *v.* Watson, (1897), 3 T. C., 500; A. C., 1; 66 L. J. Q. B., 1; 75 L. T., 334, *p.* 265
- Russell *v.* Aberdeen Town and County Bank, (1888), 2 T. C., 321; 13 A. C., 418, *p.* 272
- Russell *v.* Coutts, (1881), 1 T. C., 469; 9 R., 261; 19 S. L. R., 197, *p.* 353
- Ryhope Coal Co. *v.* Foyer, (1881), 1 T. C., 343; 7 Q. B. D., 485, *p.* 288
- St. Andrew's Hospital, Northampton *v.* Shearsmith, (1887), 2 T. C., 219; 19 Q. B. D., 624; 35 W. R., 811, *p.* 40
- St. Louis Breweries *v.* Apthorpe, (1898), 4 T. C., 111; 79 L. T., 551; 57 W. R., 334, *p.* 222

- San Paulo Railway Co. *v.* Carter, (1896), 3 T. C., 344 and 407; A. C., 31; 65 L. J. Q. B., 161; 73 L. T., 538; 44 W. R., 336, *p.* 216
- Scottish Equitable Life Assurance Society *v.* Allan, (1900), 4 T. C., 379; 3 F., 129; 38 S. L. R., 84, *p.* 345
- Scottish Investment Trust Co. *v.* Forbes, (1893), 3 T. C., 231; 31 S. L. R., 219, *p.* 238
- Scottish Mortgage Co. of New Mexico *v.* McKelvie, (1886), 2 T. C., 165; 24 S. L. R., 87; 14 R., 98, *p.* 294
- Scottish Provident Institution *v.* Allan, (1900), 4 T. C., 369; 3 F., 129; 38 S. L. R., 84, *p.* 345
- Scottish Provident Institution *v.* Allan, (1901), 4 T. C., 409 and 591; 38 S. L. R., 683; (1903), A. C., 129; 88 L. T., 478; 40 S. L. R., 605, *p.* 299
- Scottish Provident Institution *v.* Farmer, (1912), 6 T. C., 34; 49 S. L. R., 435; S. C., 452, *p.* 301
- Scottish Shire Line *v.* Lethem, (1912), 6 T. C. 91; 49 S. L. R., 792; S. C., 1,108, *p.* 69
- Scottish Union and National Insurance Co. *v.* Smiles, (1889), 2 T. C., 551; 26 S. L. R., 330; 16 R., 461, *p.* 249
- Scottish Widows' Fund and Life Assurance Society *v.* *In re*, (1880), 1 T. C., 245; 7 R., 491; 17 S. L. R., 314, *p.* 352
- Scottish Widows' Fund and Life Assurance Society *v.* Allan, (1900), 4 T. C., 369; 3 F., 129; 38 S. L. R., 84, *p.* 345
- Scottish Widows' Fund Life Assurance Society *v.* Farmer, (1909), 5 T. C., 502; 46 S. L. R., 993, *p.* 300
- Seaman *v.* Lee, (1899), 4 T. C., 67; 68 L. J. Q. B., 593, *p.* 370
- Secretary of State for India *v.* Scoble, (1903), 4 T. C., 478, 618; A. C., 299; 72 L. J. K. B., 617; 89 L. T., 1; 51 W. R., 675, *p.* 201
- Shaw *v.* Kay, (1904), 5 T. C., 74; 12 S. L. T. R., 495, *p.* 148
- Shrewsbury *v.* Shrewsbury, (1906), 22 T. L. R., 598, *p.* 110
- Shrewsbury, Countess of, *v.* Earl of Shrewsbury, (1906), 23 T. L. R., 100, *p.* 105
- Smiles *v.* Australasian Mortgage and Agency Co., Ltd., (1888), 2 T. C., 367; 25 S. L. R., 645, *p.* 83
- Smiles *v.* Crooke (1886), 2 T. C., 162; 13 R., 730; 23 S. L. R., 489, *p.* 355
- Smiles *v.* Merchant Company of Edinburgh, (1889), 2 T. C., 533; 17 R., 151, *p.* 343
- Smiles *v.* Northern Investment Co., of New Zealand, (1887), 2 T. C., 165; 24 S. L. R., 530, *p.* 296
- Smith *v.* Daune, 5 T. C., 25; 24 T. L. R., 444, *p.* 325
- Smith *v.* Law Guarantee and Trust Society, (1904), 20 T. L. R., 789; 2 Ch., 569; 91 L. T., 545, *p.* 112
- Smith *v.* Lion Brewery Company, Ltd., (1911); A. C., 150; W. N., 39, *p.* 276
- Smith *v.* Petrie, (1892), 3 T. C., 155; 29 S. L. R., 342, *p.* 357
- Smith *v.* Richmond, (1899), 4 T. C., 131; A. C., 448, *p.* 190
- Smith *v.* Westinghouse Brake Co., (1888), 2 T. C., 357, *p.* 267
- Smyth *v.* Stretton, (1904), 5 T. C., 36; 53 W. R., 288; 90 L. T., 756; 20 T. L. R., 443, *p.* 310
- Society of Writers to H. M. Signet *v.* Commissioners of Inland Revenue, (1886), 2 T. C., 257; 74 S. L. R., 77, *p.* 187
- Southwell *v.* Governors of Holloway College, (1895), 3 T. C., 386; 2 Q. B., 487; 64 L. J. Q. B., 791; 44 W. R., 315, *p.* 339
- Southwell *v.* Savill Brothers, Ltd., (1901), 4 T. C., 430; 2 K. B., 349; 70 L. J. K. B., 815; 85 L. T., 167; 49 W. R., 682, *p.* 275
- Sowrey *v.* Harbour Moorings Commissioners of King's Lynn, (1887), 2 T. C., 201; 3 T. L. R., 516, *p.* 173
- Standard Life Assurance Co. *v.* Allan, (1901), 4 T. C., 446; 38 S. L. R., 628; 3 F., 805, *p.* 298
- Stanley *v.* Gramophone and Typewriter Co., Ltd., (1908), 5 T. C., 358; 2 K. B., 89, *p.* 227
- Stevens *v.* Bishop, (1888), 2 T. C., 249; 20 Q. B. D., 442; 57 L. J.

- Q. B., 283; 58 L. T., 669; 36 W. R., 421, *p.* 162
- Stevens v. Durban-Roodepoort Gold Mines, Co., Ltd.*, (1909), 5 T. C., 402; 25 T. L. R., 316, *p.* 246
- Stewart v. Thames Conservancy*, (1908), 5 T. C., 297; 1 K. B., 893, *p.* 1
- Stockham v. Wallasey Urban District Council*, (1906), 95 L. T. 843, *p.* 289
- Stocks v. Sulley*, (1899), 4 T. C., 98; 36 S. L. R., 902, *p.* 160
- Strathearn Hydropathic Establishment Co., Ltd.*, *In re*, (1881), 1 T. C., 375; 18 S. L. R., 564, *p.* 365
- Strong, In re Rev. G. W.*, (1878), 1 T. C., 207, *p.* 307
- Strong & Co. v. Woodfield*, (1906), 5 T. C., 215; A. C., 448, *p.* 282
- Styles v. New York Life Insurance Co.*, (1889), 2 T. C., 460; 14 A. C., 381; 59 L. J. Q. B., 291; 61 L. T., 201, *p.* 251
- Styles v. Treasurer of Middle Temple*, (1899), 4 T. C., 123; 68 L. J. Q. B., 1046; 81 L. T., 426; 48 W. R., 164, *p.* 363
- Sugden v. Leeds Corporation*, (1913), 6 T. C., 211; 108 L. T., 578; 29 T. L. R., 402, *p.* 102
- Sulley v. Attorney-General*, (1860), 2 T. C., 149; 2 L. T., 439, *p.* 229
- Sulley v. Royal College of Surgeons, Edinburgh*, (1892), 3 T. C., 173; 29 S. L. R., 620, *p.* 188
- Sun Insurance Office v. Clark*, (1911), 6 T. C., 59; 29 T. L. R., 303; (1912), A. C., 443; 106 L. T., 438; 81 L. J. K. B., 488, *p.* 247
- Swain v. Fleming*, (1899), 4 T. C., 107; 81 L. T., 202, *p.* 359
- Tebrau (Johore) Rubber Syndicate v. Farmer*, (1910), 5 T. C., 658; 47 S. L. R., 816, *p.* 243
- Tennant v. Smith*, (1892), 3 T. C., 158; A. C., 150; 61 L. J. P. C., 11; 66 L. T., 327, *p.* 308
- Texas Land and Mortgage Co. v. Holtham*, (1894), 3 T. C., 255; 10 T. L. R., 337, *p.* 267
- Tischler v. Apthorpe*, (1885), 2 T. C., 89; 49 J. P., 272; 52 L. T. (N. S.), 814; 33 W. R., 548, *p.* 230
- Trustees of Mary Clark Home v. Anderson*, (1904), 5 T. C., 48; 2 K. B., 645, *pp.* 185, 339
- Turnbull v. Foster*, (1904), 6 T. C., 206, *p.* 211
- Turner v. Carlton*, (1909), 5 T. C., 395; 1 K. B., 932, *p.* 200
- Turner v. Cuxson*, (1888), 2 T. C., 422; 22 Q. B. D., 150; 58 L. J. Q. B., 131; 60 L. T., 332; 37 W. R., 254, *p.* 307
- Turner (Leicester) Ltd. v. Rickman*, (1898), 4 T. C., 25, *p.* 234
- Turton v. Cooper*, (1905), 5 T. C., 138; 92 L. T., 863; 21 T. L. R., 546, *p.* 311
- Tyne Boiler Works Co. v. Tyne-mouth Union*, (1886), 18 Q. B. D., 81; 56 L. J., 9; 55 L. T., 825; 35 W. R., 110, *p.* 159
- Union Bank of Scotland, In re*, (1878), 1 T. C., 195; 5 R., 598; 15 S. L. R., 319, *p.* 362
- Union Bank of Scotland v. Foster*, (1901), 4 T. C., 385; 3 F., 771; 38 S. L. R., 464, *p.* 355
- United States Brewing Co. v. Apthorpe*, (1898), 4 T. C., 17, *p.* 222
- Universal Life Assurance Society v. Bishop*, (1899), 4 T. C., 139; 68 L. J. Q. B., 962; 81 L. T., 422, *p.* 297
- Usher's Wiltshire Brewery v. Bruce*, (1914), 1 K. B., 357, *p.* 278
- Vallambrosa Rubber Co., Ltd. v. Farmer*, (1910), 5 T. C., 529, 47 S. L. R., 488, *p.* 283
- Wakefield Rural District Council v. Hall*, (1912), 6 T. C., 181; 3 K. B., 328; 81 L. J. K. B., 1201; 107 L. T., 138, *p.* 172
- Walker & Son v. Brisley*, (1900), 4 T. C., 234 and 254; 2 Q. B., 69 L. J. Q. B., 875; 83 L. T., 735; 347; 49 W. R., 23, *pp.* 160, 366
- Walker, In re*, (1874), 1 T. C., 21, *p.* 368
- Walker v. Reith*, (1906), 43 S. L. R., 245, *p.* 283
- Walsingham (Lord) v. Styles*, (1894), 3 T. C., 247, *p.* 347

- Warren *v* Warren, (1895), 72 L. T., 628, *p.* 104
- Watchmakers' Alliance and Ernest — Goodes' Stores, Ltd., *In re*, (1905), 5 T. C., 117, *p.* 49
- Watney & Co. *v* Musgrave, (1880), 1 T. C., 272; 5 Ex. D., 241; 49 L. J., Ex., 493; 42 L. T., 690; 28 W. R., 491, *p.* 273
- Watson *v* Sandie and Hull, (1898), 3 T. C., 611; 1 Q. B., 326; 67 L. J. Q. B., 319; 46 W. R., 202, *p.* 234
- Watson Brothers *v* Lothian, (1902), 4 T. C., 441; 32 S. L. R., 604; 4 F., 795, *p.* 289
- Webber *v* Glasgow Corporation, (1893), 3 T. C., 202; 30 S. L. R., 255, *p.* 254
- Weguelin *v* Wyatt, (1885), 2 T. C., 86; 14 Q. B. D., 838; 54 L. J. Q. B., 308; 52 L. T., 807; 33 W. R., 566, *p.* 345
- Werle & Co. *v* Colquhoun, (1888), 2 T. C., 402; 20 Q. B. D., 753; 57 L. J. Q. B., 323; 58 L. T., 756; 36 W. R., 613, *p.* 231
- Wilson *v* Fasson, (1883), 1 T. C., 526; 20 S. L. R., 583, *p.* 337
- Wingate (James) & Co. *v* Webber, (1897), 3 T. C., 569; 34 S. L. R., 699, *p.* 216
- Wylie *v* Eccott, (1913), 6 T. C., 128; S. C., 16; 49 S. L. R., 960, *p.* 285
- Yewens *v* Noakes, (1880), 1 T. C., 260; 6 Q. B. D., 530; 50 L. J. Q. B., 132; 44 L. T., 128; 28 W. R., 562, *p.* 345
- Yorkshire Fire and Life Insurance Co. *v* Clayton, (1881), 1 T. C., 336 and 479; 8 Q. B. D., 421; 51 L. J. Q. B., 82; 45 L. T., 697; 30 W. R., 174, *p.* 346
- Yorkshire Penny Bank, *In re*, 1889, 2 T. C., 510, *p.* 154
- Young *v* Douglas, (1879), 1 T. C., 227; 7 R., 229; 17 S. L. R., 119, *pp.* 342, 357
- Young, *In re*, (1875), 1 T. C., 57; 12 S. L. R., 602; 2 R., 925, *p.* 208
- Ystradlyfodwg and Pontypridd Main Sewerage Board *v* Bensted, (1907), 5 T. C., 230; 1 K. B., (90); A. C., 264; 23 T. L. R., 621, *p.* 161

TABLE OF STATUTES

	PAGE
HOUSE TAX ACT, 1803, (43 GEO. 3, c. 161).	
S. 10	365
S. 15	369
S. 17, 55	336
S. 60, 62	366
S. 77	336

HOUSE TAX ACT, 1808, (48 GEO. 3, c. 55).	
Schedule (A) Rule 5	367, 369
Schedule (B) Rule 1	367, 369
" " 2	357
" " 3	337, 362
" " 4	363
" " 5	356, 363
" " 6	336, 367
" " 7, 11, 12, 13	366
" " 14	367
" " Exemption 1, 4	337
" " 5	356

HOUSE TAX ACT, 1817, (57 GEO. 3, c. 25).	
S. 1, 2	341

HOUSE TAX ACT, 1825, (5 AND 6 GEO. 4, c. 7).	
S. 2	369
S. 3	356

LAND TAX COMMISSIONERS ACT, 1827, (7 AND 8 GEO. 4, c. 75).	
S. 1	54

HOUSE TAX ACT, 1832, (2 AND 3, WILL. 4, c. 113).	
S. 3	341

INCOME TAX ACT, 1842, (5 AND 6 VICT., c. 35).	
S. 4, 5, 6	57
S. 7, 8	57
S. 9	45, 46, 127
S. 10, 11	56
S. 12, 13, 14	56

	PAGE
S. 15	56, 325
S. 16	59
S. 17	56, 59
S. 18	55
S. 19	46, 59
S. 20	59
S. 21	59
S. 22	58, 59
S. 23	6, 325
S. 24, 27, 28	55
S. 29	202
S. 30, 31	60
S. 32, 33, 34	60
S. 35	55, 138
S. 36	37
S. 38	122, 138
S. 39	206
S. 40	61
S. 41	7, 231
S. 42	7
S. 43	7
S. 44	9, 231
S. 45	78
S. 46	15
S. 47	15, 136
S. 48	16, 132
S. 49	16, 324
S. 50	146
S. 51	7
S. 52	130, 147
S. 53	8
S. 54	61
S. 55	130-132
S. 56	147
S. 57, 58, 59	18, 19
S. 60	32, 61, 73, 133, 142, 157-182, 333
S. 61	6, 40, 182, 183
S. 62	40, 183
S. 63	192-195
S. 64	17, 195
S. 65	125, 196
S. 66, 67	196
S. 68	134
S. 69, 70, 71	196, 197
S. 72, 73	197, 198
S. 74	17, 38
S. 75	18

	PAGE
S. 76	18, 137, 198
S. 77, 78	198
S. 79	18
S. 80, 81	25, 26
S. 82	26, 198
S. 83, 84, 85	198
S. 86	134
S. 87	199
S. 88 . 40, 161, 73, 76, 153, 203	203
S. 89	203
S. 93, 94	203
S. 95	204
S. 96	132, 204, 205
S. 97	204
S. 98	6, 203
S. 99	134
S. 100	8, 83, 237-305
S. 101	172
S. 102	83, 91, 92-94, 97, 101, 166
S. 103	107-110, 137
S. 104	110, 305
S. 105	40, 41, 253
S. 106	147, 291, 305
S. 108	8, 22
S. 109	306
S. 110	147
S. 111-117	19, 20
S. 118	26
S. 119-124	26-28
S. 125	26
S. 126, 127	126
S. 128	135
S. 129	28, 131, 132, 148
S. 130	324
S. 131	324
S. 132	325
S. 134	4, 32, 145
S. 135	58
S. 136	35
S. 137	35, 121
S. 138	36, 121
S. 139, 140	122
S. 141, 142	122
S. 146	307-319
S. 147	319
S. 149	39
S. 150	46, 60, 126
S. 151-155	320
S. 156	60
S. 157	126, 128, 129
S. 158	106, 320
S. 159	156
S. 160	58
S. 161	32, 136
S. 162	34
S. 163	2, 3

	PAGE
S. 164	2
S. 165	4
S. 166	134, 137
S. 167	2
S. 168	4
S. 169	2, 6
S. 170	3
S. 171	70
S. 172	36, 47
S. 173	8
S. 174	53
S. 176	9
S. 177	20, 50, 132, 137
S. 178	133, 137
S. 179	6, 326
S. 180, 181	137, 138
S. 182	140
S. 183	144
S. 184	333
S. 185	141, 142
S. 186	39, 325
S. 187	1
S. 188	25, 186
S. 190	148
S. 191	55, 325
S. 192	6, 122
Schedule G	148

INCOME TAX (FOREIGN DIVIDENDS)
ACT, 1842 (5 AND 6 VICT., c. 80).
S. 2 132, 204, 293

HOUSE TAX ACT, 1851, (14 AND 15
VICT., c. 36).
S. 1 335
S. 3 336
Schedule 336, 356, 364, 365

	PAGE
INCOME TAX ACT, 1853, (16 AND 17 VICT., c. 34). S. 2 82, 157, 192, 201, 206, 306	
S. 3	15
S. 4	38
S. 5	113
S. 8	306
S. 10	294
S. 11-13	114
S. 14-16	115
S. 17	116
S. 18	117, 145
S. 19	114, 137
S. 20, 21	115
S. 22	115, 116
S. 23	116
S. 24	114
S. 25	117

TABLE OF STATUTES

XXV

	PAGE
S. 26	60
S. 28	4
S. 29	117
S. 30	4
S. 31	117
S. 32	162, 179
S. 33	117
S. 34	181
S. 35	180, 194
S. 36	181
S. 37	181
S. 38	323
S. 39	193
S. 40	93-97, 101, 107, 137, 167, 180
S. 41	115
S. 42	180
S. 43	118
S. 47	23, 26
S. 48	270
S. 49	76
S. 50	257
S. 51	317
S. 52	44
S. 53	22
S. 54	119
S. 55	22
S. 56	137
S. 58	118
INCOME TAX (INSURANCE) ACT, 1853, (16 AND 17 VICT., c. 91.)	
S. 1	120
INCOME TAX ACT, 1854, (17 AND 18 VICT., c. 24).	
S. 3	83
S. 5	114
INCOME TAX (INSURANCE) ACT, 1853, (18 AND 19 VICT., c. 35).	
S. 1	120
TAXES ACT, 1856 (19 AND 20 VICT., c. 80)	
S. 1	323
LANDS VALUATION (SCOTLAND) ACT, 1857, (20 AND 21 VICT., c. 58).	
S. 1, 3	322
INCOME TAX ACT, 1859, (22 AND 23 VICT., c. 18).	
S. 6	120
INCOME TAX ACT, 1860, (23 AND 24 VICT., c. 14).	
S. 5	142

	PAGE
S. 6	144
S. 7	178, 325
S. 10	119, 145
REVENUE (No. 2) ACT, 1861, (24 AND 25 VICT., c. 91).	
S. 36	294
REVENUE ACT, 1863, (26 AND 27 VICT., c. 33).	
S. 22	177
REVENUE (No. 1) ACT, 1864, (27 AND 28 VICT., c. 18).	
S. 15	94
REVENUE ACT, 1866, (29 AND 30 VICT., c. 36).	
S. 8	143, 172, 177
S. 9	205, 294
REVENUE ACT, 1867, (30 AND 31 VICT., c. 90).	
S. 25	341
REVENUE ACT, 1868, (31 AND 32 VICT., c. 28).	
S. 5	294
VALUATION (METROPOLIS) ACT, 1869, (32 AND 33 VICT., c. 67).	
S. 77	199
HOUSE TAX ACT, 1871, (34 AND 35 VICT., c. 103).	
S. 31	365
INCOME TAX (PUBLIC OFFICES) ACT, 1872, (35 AND 36 VICT., c. 82).	
S. 1	144
CUSTOMS AND INLAND REVENUE ACT, 1876, (39 AND 40 VICT., c. 16).	
S. 8	4
CUSTOMS AND INLAND REVENUE ACT, 1878, (41 AND 42 VICT., c. 15).	
S. 12	64, 65, 69, 146
S. 13	341, 342
CUSTOMS AND INLAND REVENUE ACT, 1879, (42 AND 43 VICT., c. 21).	
S. 18	61
TAXES MANAGEMENT ACT, 1880 (43 AND 44 VICT., c. 19).	
S. 5	37, 38, 39, 51, 54, 56, 58, 123, 124, 146, 325, 331

	PAGE
S. 8	325
S. 10	77
S. 15	54, 73-75
S. 16	25, 75
S. 17	331
S. 18	129
S. 19, 20	138
S. 21	139, 140
S. 22	142
S. 23	136
S. 24	117
S. 26	55
S. 27	58
S. 28	57
S. 29, 30	57, 58
S. 32	122
S. 33	55
S. 34	129
S. 35	58, 126
S. 36, 37	124
S. 38	123
S. 39	18, 137
S. 40	55, 138
S. 41	46, 127
S. 42	37
S. 43	332
S. 44, 45	37
S. 46	126
S. 48	15, 371, 383
S. 49	16, 17
S. 50	17, 19
S. 51	17
S. 52	18, 20, 21, 25
S. 53, 54	123
S. 55	17
S. 56	18
S. 57	22-26, 127
S. 58	24
S. 59	32, 76, 77, 220
S. 60	28, 70
S. 61	35, 36
S. 62	306
S. 63	32, 33, 129
S. 64	33
S. 65	34
S. 66	136
S. 67, 68	34
S. 69	35
S. 70	39, 40, 127
S. 72	124
S. 73	51, 52, 127
S. 74	52
S. 75, 76	53
S. 77	52
S. 78	53
S. 79	53
S. 81	321

	PAGE
S. 82	46, 382
S. 83	36
S. 84	36, 46, 137
S. 85	47
S. 86	48
S. 87-88	48
S. 89	49
S. 90, 91	49, 50
S. 92	8, 9
S. 93	122
S. 94	324
S. 95	143
S. 96	116
S. 97	138, 321, 322
S. 98, 99	47
S. 100, 101	50
S. 102	138
S. 103	50, 154
S. 104	51
S. 105-107	154, 155
S. 108, 109	156, 157
S. 110	54
S. 111	139
S. 112	82
S. 114	127, 382, 383
S. 115	332
S. 116-118	53, 54
S. 119, 120	139
S. 121	127, 128
Schedule 2	74
CUSTOMS AND INLAND REVENUE	
ACT, 1881, (44 AND 45 VICT., c. 12).	
S. 23	47
S. 24	342
S. 25	123
REVENUE ACT, 1883, (46 AND 47	
VICT., c. 55).	
S. 12	55
S. 13	123
REVENUE ACT, 1884, (47 AND 48	
VICT., c. 62).	
S. 6	123, 124
S. 7	50, 321, 323
CUSTOMS AND INLAND REVENUE	
ACT, 1885, (48 AND 49 VICT., c. 51).	
S. 11	187
S. 25	144, 145
S. 26	205, 294
CUSTOMS AND INLAND REVENUE	
ACT, 1887, (50 AND 51 VICT., c. 15).	
S. 18	193
CUSTOMS AND INLAND REVENUE	
ACT, 1888, (51 AND 52 VICT., c. 8).	
S. 23	83, 100, 251

	PAGE
S. 24 . . . 89, 96-98, 101, 125, 166, 167, 205	

REVENUE ACT, 1889, (52 AND 53
VICT., c. 42).

S. 10	122
S. 12	75
S. 13	144
S. 14	138, 139

CUSTOMS AND INLAND REVENUE
ACT, 1890, (53 AND 54 VICT., c. 8).

S. 22	13
S. 23	31, 135, 145, 194, 283
S. 24	8
S. 25	364
S. 26	365, 370
S. 27	123
S. 28	333
S. 30	9

INLAND REVENUE REGULATION ACT,
1890, (53 AND 54 VICT., c. 21).

S. 1, 2, 3	38
S. 4	39, 52
S. 6	38
S. 8	55, 138
S. 9	39
S. 10	129, 130
S. 11, 12	136
S. 13	5
S. 14	5, 129
S. 15	5
S. 21	141
S. 22	140
S. 23	139, 140
S. 24, 27	140, 141
S. 32-35	141, 142
S. 37	38

CUSTOMS AND INLAND REVENUE
ACT, 1891, (54 AND 55 VICT., c. 25).

S. 2	13
----------------	----

TAXES (REGULATION OF REMUNER-
ATION) ACT, 1891, (54 AND 55
VICT., c. 13).

S. 2	144
S. 3-5	145

CUSTOMS AND INLAND REVENUE
ACT, 1892, (55 AND 56 VICT., c. 16).

S. 3	13
----------------	----

TAXES (REGULATION OF REMUNER-
ATION) AMENDMENT ACT, 1892,
55 AND 56 VICT., c. 25).

S. 1	145
----------------	-----

	PAGE
TRADE UNION (PROVIDENT FUNDS) ACT, 1893, (56 AND 57 VICT., c. 2).	
S. 1, 2	332, 333

CUSTOMS AND INLAND REVENUE
ACT, 1893, (56 AND 57 VICT., c. 7).

S. 5	13
S. 7	58

INDUSTRIAL AND PROVIDENT SOCIE-
TIES ACT, 1893, (56 AND 57 VICT.,
c. 39).

S. 24	81
-----------------	----

FINANCE ACT, 1894, (57 AND 58
VICT., c. 30).

S. 33	13
S. 34	4
S. 35	190, 191, 271
S. 36	153, 154

FINANCE ACT, 1895, (58 AND 59
VICT., c. 16).

S. 17	13
-----------------	----

FINANCE ACT, 1896, (59 AND 60
VICT., c. 28).

S. 25	13
S. 26	157, 192
S. 27	193
S. 28	25
S. 30	332
S. 31	383
S. 32	383, 384
S. 33, 35	384
S. 38	141

FINANCE ACT, 1897, (60 AND 61
VICT., c. 24).

S. 4	13
S. 5	80, 81

FINANCE ACT, 1898, (61 AND 62
VICT., c. 10).

S. 7	13
S. 8	4, 71
S. 9	271
S. 10	179
S. 12	383
S. 16	24

FINANCE ACT, 1899, (62 AND 63
VICT., c. 9).

S. 15	13
-----------------	----

FINANCE ACT, 1900, (63 VICT., c.
7).

S. 15	13
-----------------	----

	PAGE
FINANCE ACT, 1901, (1 EDW. 7, c. 7).	
S. 12	13
FINANCE ACT, 1902, (2 EDW. 7, c. 7).	
S. 10	13
FINANCE ACT, 1903, (3 EDW. 7, c. 8).	
S. 5	13
REVENUE ACT, 1903, (3 EDW. 7, c. 46).	
S. 10	120, 134
S. 11	370
S. 12	124
S. 13	25
FINANCE ACT, 1904, (4 EDW. 7, c. 7).	
S. 7	13
S. 8	76
S. 9	120
FINANCE ACT, 1905, (5 EDW. 7, c. 4.)	
S. 6	13
FINANCE ACT, 1906, (6 EDW. 7, c. 8).	
S. 6	13
REVENUE ACT, 1906, (6 EDW. 7, c. 20).	
S. 11	120
LAND TAX COMMISSIONERS ACT, 1906, (6 EDW. 7, c. 52).	
S. 2	54
FINANCE ACT, 1907, (7 EDW. 7, c. 13).	
S. 18	13
S. 19	70-73
S. 20	5, 73, 327
S. 21	132, 146, 147
S. 22	61, 132, 147
S. 23	8, 20, 21, 32, 140
S. 24	30, 32
S. 25	125
S. 26	64, 69
S. 27	30, 193
S. 28	44
FINANCE ACT, 1908, (8 EDW. 7, c. 16).	
S. 7	13
S. 8	144

	PAGE
FINANCE (1909-10) ACT, 1910, (10 EDW. 7, c. 8).	
S. 65	14
S. 66	321, 328
S. 67	71
S. 68	43, 44, 71
S. 69	190, 191
S. 70	76
S. 71	121, 145, 294
S. 72	133, 328-330
S. 94	136
S. 95	13
FINANCE ACT, 1910, (10 EDW. 7, AND 1 GEO. 5, c. 35).	
S. 3	14
REVENUE ACT, 1911, (1 GEO. 5, c. 2).	
S. 11	329
S. 12	121
S. 13	294
S. 14	111
PERJURY ACT, 1911, (1 & 2 GEO. 5, c. 6).	
S. 5	133
FINANCE ACT, 1911, (1 & 2 GEO. 5, c. 48).	
S. 14	14
S. 15	342
FINANCE ACT, 1912, (2 & 3 GEO. 5, c. 8).	
S. 5	14
S. 6	327
S. 7	1
FINANCE ACT, 1913, (3 & 4 GEO. 5, c. 30).	
S. 3	14, 317
PROVISIONAL COLLECTION OF TAXES ACT, 1913, (3 & 4 GEO. 5).	
S. 1	12
S. 2, 3	13
FINANCE ACT, 1914, (4 & 5 GEO. 5, c. 10).	
S. 2	9, 10, 14, 200
S. 3	326, 331
S. 4	71
S. 5	293
S. 6	14
S. 7	43
S. 8	191
S. 9	80, 329
S. 10	207
S. 11	294

INCOME TAX & INHABITED HOUSE DUTY LAW & CASES

PART I—INCOME TAX

ABATEMENT AND EXEMPTION— EXEMPTION.

Letters Patent.—Exemption may not be granted by letters patent; nor by any manner of liberties, privileges, etc.; nor by any statutes granting any salary, annuity or pension free of tax. (*Income Tax Act, 1842, s. 187.*)

Exemption by virtue of private Act.

Stewart v. Thames Conservancy (High Court of Justice, 1908).

Held that a private and local act passed in 1894 which exempted the conservators in respect of certain property from all Parliamentary rates, taxes, assessments and payments whatsoever, exempted them from Income Tax for 1895 and all subsequent years.

Duke of Argyll v. Commissioners of Inland Revenue (High Court of Justice, 1913).

Princess Louise was in receipt of an annuity of £6,000 granted by the Crown, under an Act of 1871, "free from all taxes, assessments, and charges." It was held that this enactment was inconsistent with the Income Tax Act, 1842, s. 187, but being later than that Act must prevail over it.

National Insurance Act, 1911.—The income derived by any approved Society, or branch thereof, from any funds or credits of Part I of the *National Insurance Act, 1911*, or any investment of such funds or credits, are exempt from income tax. The exemption may be claimed as in the case of charities (see page 40). A similar exemption extends to the funds of the Insurance Commissioners. (*Finance Act, 1912, s. 7.*)

ABATEMENT AND EXEMPTION—contd.**EXEMPTION TO SMALL INCOMES.**

Claims.—Any person charged or chargeable by assessment or by way of deduction who shall prove to the general commissioners in the district where he shall reside that the aggregate amount of his income, estimated according to the rules and directions of this Act, is less than £150,¹ shall be exempted and entitled to be repaid the amount of all deductions or payments on account of the duties except so much as he shall be entitled to charge against any other person or retain from any payment. (*Income Tax Act, 1842, s. 163.*)

The claim shall be made in such form as may be provided under the authority of this Act, the claimant declaring and setting forth therein all the particular sources from which the income shall arise and the amount from each source, and also every sum of annual interest or other annual payment reserved or charged thereon whereby the income shall or may be diminished, and also every sum which such claimant may be entitled to charge against any other person on account of the **Income Tax**.

It shall be delivered to the assessor of the parish where the claimant shall reside. The inspector or surveyor may examine the claim, and if he makes no objection thereto, the general commissioners may allow it. If objection is made the matter shall be determined by the general commissioners upon such rules as other appeals are heard (see under **Appeals**, page 22). (*s. 164.*)

The Annual Value of lands, tenements, hereditaments or heritages and income arising from their occupation shall be estimated according to the rules of Schedules A and B (see page 157). (*s. 167.*)

Claims shall be made where claimant resides, or, where the whole income is from an office, before the commissioners for the department concerned.

Persons out of Great Britain shall claim by affidavit before any person having authority to administer an oath, the claims being received by the commissioners acting in relation to the assessment. (Now see under **Non-residents.**) (*s. 169.*)

Any claim for exemption may be made by any guardian, trustee, attorney, agent or factor of any party who it is proved is unable to attend in person, or such claim may be made by persons acting for

¹ Now not exceeding £160, see page 4.

ABATEMENT AND EXEMPTION—*contd.*

others as for the purpose of being assessed on their own account. (s. 170.) (See under **Agents**, page 6.)

What is a Person?

Myllam v. Market Harborough Advertiser Co., Ltd. (High Court of Justice, 1905).

Held that a limited liability company, being entitled to deduct tax on payment of its dividends, is not entitled to claim exemption as a person on the ground that its income is under £160 per annum. *Phillimore, J.*—"The exemptions in section 163 are carefully conditioned in this way, that there is an exception of so much of such duties as the person claiming such exemption shall or may be entitled to charge against any other person or to deduct or retain from or out of any payment to which such claimant may be or become liable. . . . In this case the company are bound in the first instance to make a return showing what their profits will be before any dividend is made, and then they are entitled in paying their dividend to deduct from that dividend as against each recipient his quota of the common income tax on the whole return of the corporate body. That being so, there is no reason for the exemption of the corporation, and the exception upon the exemption in this section certainly applies." (See the last clause of s. 163 above.)

Curtis v. Old Monkland Conservative Association (House of Lords, 1906).

As regards the exemption allowed to incomes under £160 per annum, it was held that only persons in the primary sense of the term are entitled thereto, and not bodies, societies, etc. The association was an unincorporated one, and paid no dividend. *Lord Robertson.*—"The section primarily and directly under construction is the 163rd of the Act of 1842; and it purports to confer an exemption upon persons. 'Any person charged' is the recipient of the exemption. This, of course, carries us straight to the charging sections; and in Section 40, we find that while societies (I use this term for shortness) meet

ABATEMENT AND EXEMPTION—*contd.*

the same fate as persons, the scheme of the section is to do this by express enactment, the section holding the two notions of societies and persons, as antecedently separate and requiring enactment to bring about their identical treatment in the matter of charge. The exempting section deliberately adopts one only of the contrasted classes, and confers the exemption on persons." (Section 40 is printed on page 47.)

History of Limits.—Exemption limit reduced to £100. (*Income Tax Act*, 1853, s. 28.) Exemption allowed to incomes so reduced by Section 134, *Income Tax Act*, 1842. (*Income Tax Act*, 1853, s. 30.) Exemption limit raised to £150. (*Customs and Inland Revenue Act*, 1876, s. 8.) Exemption allowed to incomes not exceeding £160 (the present limit). (*Finance Act*, 1894, s. 34.)

Repayment.—General Commissioners may grant a certificate authorising repayment of duty paid by way of deduction. (*Income Tax Act*, 1842, s. 165.)

Partners and Joint Tenants may severally claim, but profits of lands are not to be charged separately under Schedule B, where lands are let or underlet without the lessor relinquishing possession or where the lessee or tenant is not exclusively in the possession and occupation of the lands. (s. 168.)

ABATEMENT.

Limits.—Any individual who, having been assessed or charged to income tax or having paid income tax either by deduction or otherwise, claims and proves in the manner prescribed by the *Income Tax Acts*¹ that his total income from all sources although exceeding £160 does not exceed £700 shall be entitled to relief, equal—

- if his total income does not exceed £400 to tax upon £160 ;
- if his total income exceeds £400 and does not exceed £500 to tax upon £150 ;
- if his total income exceeds £500 and does not exceed £600 to tax upon £120 ;
- if his total income exceeds £600 and does not exceed £700 to tax upon £70 ;

Relief shall be given either by reduction of the assessment or by repayment of the excess. (*Finance Act*, 1898, s. 8.)

¹ (*i.e.*, the rules stated above under Exemption.)

ABATEMENT AND EXEMPTION—*contd.***EXEMPTION AND ABATEMENT—GENERAL.**

Partners.—The income of an individual in a partnership may be treated separately for the purpose of exemption or abatement, and if so treated shall be deemed to be the share to which he is entitled, during the year to which the claim relates, in the partnership profits as estimated according to the rules of the Income Tax Acts. (*Finance Act, 1907, s. 20.*)

Persons non resident in the United Kingdom.—See under **Non-Residents in United Kingdom**, page 120.

Penalty for false Claim.—See under **Penalties**, page 134.

Time limit for Repayments.—See under **Repayment**, page 145.

What Income must be included in Claim.—See under “**Schedule E.—Scope of Schedule.**”—*Tennant v. Smith* and cases following, page 308.

Rate of Tax on small incomes.—See page 14.

¹ ACCOUNTS—

Commissioners of Inland Revenue shall collect every part of inland revenue and keep distinct accounts thereof at the Head Office. (*Inland Revenue Regulation Act, 1890, s. 13 (1).*)

The accounts shall show the amounts charged, collected, received and in arrear, and payments made or allowed for collection and management, and of all other payments. (s. 13 (2).)

Every Collector and other person entrusted with the collection, receipt or custody of inland revenue shall render accounts in the prescribed manner. (s. 14 (1).)

For neglect he shall be guilty of misdemeanour and on conviction shall be incapable of holding office under the Crown. (s. 14 (2).)

Commissioners of Inland Revenue may require any such collector or other person to swear to the accounts. (s. 14 (3).)

Every collector and other person entrusted with the collection, receipt or custody of inland revenue, shall remit the moneys at the prescribed time and in the prescribed manner and form. (s. 15 (1).)

On neglect he shall forfeit office and security and pay treble the amount of the sum of money or security for money. (s. 15 (2).)

¹ Refers also to House Duty.

ADDITIONAL ASSESSMENTS—

See under Assessments—Additional First Assessments.

AFFIDAVITS—

Special Commissioners may not (except when acting in place of general commissioners or on appeal) summon any person to be examined by them, but enquiries shall be answered by affidavit, to be taken before a general commissioner in the place of assessment. (*Income Tax Act*, 1842, s. 23.)

Schedule A, No. VI.—Allowances for rents belonging to hospitals, public schools, almshouses or charities shall be claimed by affidavit before the general commissioners in the district of residence. (s. 61.)

Schedule C.—Special commissioners may require affidavits before them in support of a claim to exemption. (s. 98.)

Foreign Claims.—Claims to exemption by persons residing out of the United Kingdom shall be by affidavit, before any person having the authority to administer an oath in the place of residence. (s. 169.) See also under **Non-residents**.

Affidavit includes Affirmation in the case of persons entitled by law to make an affirmation in lieu of oath. (s. 192.)

Exemption from Stamp Duty is allowed. (s. 179.)

See also under **Oaths**, page 122.

AGENTS—

Infant, married woman, lunatic, idiot or insane person.—The trustee, guardian, tutor, curator, or committee of any such person having the direction, control, and management of the property or concern of such person (whether such person shall reside in the United Kingdom or not) shall be chargeable in like manner and to the same amount as would be charged if such infant were of full age, the married woman were feme sole, or such lunatic, etc., capable of acting for himself.

Any person not resident in the United Kingdom whether a subject of Her Majesty or not, shall be chargeable in the name of such trustee, guardian, tutor, curator, committee or factor or agent or receiver having the receipt of profits or gains belonging to such person. (See dicta on pages 229 to 237 as to agents having the receipt of profits, etc.) (*Income Tax Act*, 1842, s. 41.)

AGENTS—*contd.*

Trustee, guardian, tutor, curator, committee, agent or receiver shall be answerable for the doing of all acts, etc., required by this Act in order to the assessing of any such person and paying the duties. (*Income Tax Act, 1842, s. 41.*)

No trustee having authorised the receipt of the profits by the person entitled thereunto (such profits being actually so received), nor any agent or receiver of any person of full age resident in the United Kingdom (other than a married woman, lunatic, idiot and insane person) shall be required to do more than deliver a list of the name and residence of such person, unless the commissioners shall require the testimony of such trustee, agent, or receiver, in pursuance of the powers of the Income Tax Acts. (s. 42.)

Receiver of Trust property appointed by the Court of Chancery or other courts shall be chargeable and answerable for all acts required with reference thereto. (*Income Tax Act, 1842, s. 43.*)

Returns.—Every person in receipt of any money or value or profits or gains of another person who is chargeable for the same (or would be chargeable if a resident in the United Kingdom) shall, within the time limited for returns, deliver a list containing a statement of all money, value, profits or gains and the name and place of abode of every person to whom the same shall belong, with a declaration whether such person is of full age, or married woman living with her husband, or married woman whose husband is not accountable for the payment of the duty charged on her, or an infant, idiot, lunatic or insane person (so that duty may be charged on the agent or the owner as necessary). Every person acting in such character jointly with any other person shall deliver a list of the names and addresses of every person joined with him at the time of delivering the list. (s. 51.)

Lord Advocate v. Gibb (Court of Session, Scotland, 1906).

Held that under Income Tax Act, 1842, s. 51, a firm transacting underwriting business on behalf of clients, accounting to them yearly for the profits of the business, and receiving a commission, is required to make returns of the names and addresses of the clients and of the profits of each.

Every person acting as aforesaid for any person who cannot be charged shall deliver, in the district where he ought to be charged

AGENTS—*contd.*

on his own account, a true and correct statement of the amount of profits and gains to be charged on account of such other person. Where two or more persons shall be liable to be charged for the same person one return only is required (from one person for all or jointly). Double assessment may be discharged on application to the commissioners. (*Income Tax Act, 1842, s. 53.*)

In a case of partnership where all partners reside abroad, the return shall be made by their agent, manager, or factor resident in the United Kingdom jointly for the partners, and the assessment shall be made in the partnership name. (*Cases I and II. Rule 3. Income Tax Act, 1842, s. 100.*)

See also under **Returns**, page 144.

Infants and Deceased Persons.—Where any person chargeable with the duties shall be under the age of twenty-one or shall die, the parents, guardians or tutors and the executors shall be liable, and may be proceeded against as any other person making default of payment. (*Income Tax Act, 1842, s. 173, and Taxes Management Act, 1880, s. 92.*)

Where any person shall have died without making a return of all his profits or gains, with a view to assessment in respect of the profits or gains which arose or accrued before his death, an assessment may be made within the year of assessment or three years (*Finance Act, 1907, s. 23 (2)*) after the expiration thereof. (*Customs and Inland Revenue Act, 1890, s. 24.*)

Remittances from Abroad.—Profits from foreign or colonial possessions or securities shall be returned to and charged by the commissioners at London, Bristol, Liverpool and Glasgow (the port nearest to the place of import, or to the residence of the owner).

In default of the owner being charged, the trustee, agent or receiver shall be answerable for all matters in order to the assessing and paying of the duties.

The remittances shall be chargeable at London when parts are received there and parts at different ports. When parts are received in different ports but none in London they shall be charged together in one sum where most are received. Statements shall be delivered to the commissioners at each place of import and sent by them to the Board, who shall forward them to the place of charge. (*Income Tax Act, 1842, s. 108.*)

AGENTS—*contd.*

See *King v. Kensington Commissioners*, 1913, page 21.

See also **Schedule D, Cases IV and V**, page 293, as to persons entrusted with the payment of foreign and colonial dividends, etc.

Retention of Duties.—Any person (being a trustee, etc.) assessed for another person may retain so much of the moneys in his hands as is sufficient to pay the assessment. (*Income Tax Act, 1842, s. 44.*)

All executors and administrators may deduct from the assets of the deceased all payments of duty made by them which the deceased was chargeable with. (*Taxes Management Act, 1880, s. 92.*)

APPEALS,

See under **Assessments—Appeals.**

ASSESSMENTS—GENERAL PROVISIONS.

For one year.—Every assessment to be made under this Act within the year appointed for making the same shall be deemed to be for the current year, and shall be in force for one year; and every assessment made after the expiration of any year in which the same ought to have been made, shall be deemed to be for the whole of the year current when the assessment ought to have been made; and such year shall commence for every subsequent assessment during the continuance of this Act from the fifth day of April in such year. (*Income Tax Act, 1842, s. 176.*)

Provisions of preceding year.—In order to ensure the collection in due time of any duties of income tax which may be granted for any year commencing on the 6th day of April, all such provisions contained in any Act relating to income tax as were in force on the preceding day shall have full force and effect with respect to the duties which may be so granted, in the same manner as if the said duties had been actually granted by Act of Parliament, and the said provisions had been applied thereto by the Act. (*Customs and Inland Revenue Act, 1890, s. 30.*)

Annual Charge.—Income tax is granted for one year only. For example, the duty for 1914-15 is granted as follows—

Income Tax for the year beginning on the sixth day of April, 1914, shall be charged at the rate of one shilling and threepence. (*Finance Act, 1914, s. 2 (1).*)

All such enactments relating to Income Tax as were in force

ASSESSMENTS—GENERAL PROVISIONS—*contd.*

with respect to duties of income tax granted for the year beginning on the sixth day of April, 1913, shall have full force and effect with respect to any duties of Income Tax hereby granted. (*Finance Act, 1914, s. 2 (2).*)

Assessments under Schedules A and B. are usually continued year by year for several years. The *Revenue Bill, 1914, s. 19*, proposes that inspectors and surveyors of taxes shall be assessors (excluding London), and that the Board may exercise the powers of the local commissioners in calling for returns. The assessments may be made according to the facts existing when they are completed.

Bowles v. Bank of England (High Court of Justice, 1912).

It was held that the deduction of income tax from dividends paid on Government Stock between 6th April and the passage of the Finance Act in each year is illegal, notwithstanding the resolution in the House of Commons declaring the rate chargeable. *Parker, J.*—"By the 30th section of the Customs and Inland Revenue Act, 1890, it is provided that, in order to ensure the collection in due time of any duties of income tax which may be granted for any year commencing on the 6th April, all such provisions contained in any Act relating to income tax as were in force on the preceding day shall have full force and effect with respect to the duties of income tax which may be granted in the same manner as if the said duties had been actually granted by Act of Parliament. There can be no doubt that under this section the officials charged with the collection of income tax can carry out all the preliminary work necessary for its assessment and collection, and under some of the Schedules to the Act of 1842, though not possibly under Schedule C, there is a considerable amount of such preliminary work. . . . The proper interpretation to be placed upon the section is that, although it keeps alive the machinery of the Income Tax Acts for the purposes of all the preliminary work necessary for the collection of any income tax which may be imposed for any financial year, it does not authorise any assessment or collection of a tax not yet imposed by Parliament."

ASSESSMENTS—GENERAL PROVISIONS—*contd.*

Prior to passage of Finance Act.

Where a resolution is passed by the committee of Ways and Means of the House of Commons (so long as it is a committee of the whole House) *providing for the variation of any existing tax, or for the renewal for a further period of any tax in force during the previous financial year*, whether at the same or a different rate, and whether with or without modifications, and the resolution contains a declaration that it is expedient in the public interest that the resolution should have statutory effect under the provisions of the Act,

The resolution shall, for the period limited by this section, and subject to the provisions of this Act, have statutory effect as if contained in an Act of Parliament,

And, where the resolution provides for the renewal of a tax, all enactments that were in force with reference to that tax as last imposed by Act of Parliament shall, during the said period, and subject to the provisions of this Act, have full force and effect with respect to the tax as renewed by the resolution :

Provided that—

- (a) The resolution shall cease to have statutory effect if it is not agreed to, with or without modification, by the House within the next ten days on which the House sits after the resolution is passed by the committee, and also if the Bill varying or renewing the tax is not read a second time within the next twenty days on which the House sits after the resolution is agreed to ; and
- (b) The resolution shall cease to have effect if Parliament is dissolved or prorogued, or an Act comes into operation varying or renewing the tax, or the resolution is rejected by the House, or the provisions giving effect to the resolution are rejected during the passage of the Bill containing those provisions through the House, and the resolution, if modified by the House, shall have effect under this Act as so modified ; and
- (c) Where the resolution so ceases to have statutory effect, or the said period terminates, before an Act comes into operation varying or renewing the tax, any money paid in pursuance of the resolution shall be repaid or made good, and any

ASSESSMENTS—GENERAL PROVISIONS—*contd.*

deduction made in pursuance of the resolution shall be deemed to be an unauthorised deduction ; and

- (d) Where the tax as varied or renewed by the resolution is modified, either by the House or by the Act varying or renewing the tax, any money which has been paid in pursuance of the resolution, which would not have been payable under the new conditions affecting the tax shall be repaid or made good, and any deduction made in pursuance of the resolution shall, as far as it would not have been authorised under the new conditions affecting the tax, be deemed to be an unauthorised deduction ; and
- (e) When during any session a resolution has had statutory effect under this Act, statutory effect shall not be again given under this Act in the same session to the same resolution or to a resolution having the same effect. (*Provisional Collection of Taxes Act, 1913, s. 1 (1).*)

The period for which a resolution shall have statutory force under this section shall be a period expiring at the end of four months after the date on which the resolution is expressed to take effect, or, if no such date is expressed, after the date on which the resolution is passed by the Committee. (s. 1 (2).)

In this Act any expression referring to the renewal of a tax shall be deemed to refer also to the reimposition of a tax. (s. 1 (3).)

Any payment or deduction made on account of a temporary tax within one month after the date of the expiration of the tax shall, if the payment or deduction would have been a legal payment or deduction if the tax had not expired, be deemed to be a legal payment or deduction,

Subject to the condition that if a resolution is not passed by the House of Commons or by the Committee of Ways and Means of the House of Commons (if that Committee is a Committee of the whole House) within that month for the renewal of the tax,

Or if such a resolution is passed within that month but ceases to have statutory effect under this Act, any money so paid or deducted shall be repaid or made good,

And that if the tax is ultimately renewed at a different rate, or with modifications, any amount paid or deducted which could

ASSESSMENTS—GENERAL PROVISIONS—*contd.*

not properly have been paid or deducted under the new conditions affecting the tax shall be repaid or made good.

For the purposes of this provision, the expression "temporary tax" means a tax which has been imposed or renewed for a limited period not exceeding eighteen months, and was in force or imposed during the previous financial year. (s. 2 (1).)

Section 95 of the Finance (1909-10) Act, 1910, shall have effect with respect to any duties imposed by the Finance Act of this or (1913-14) or any previous year, with the substitution of a reference to that Finance Act for any reference in that section to "this Act," but this provision shall not affect any past proceeding in any court of law. (s. 2 (2).)

This Act shall apply only to duties of customs and excise and to income tax. (s. 3.)

Deficiency in the tax deducted.—See page 111.

RATES.

1890.	6d. in the pound.	<i>Customs & Inland Revenue Act,</i>	1890, s. 22.
1891.	6d. " "	" "	1891, s. 2.
1892.	6d. " "	" "	1892, s. 3.
1893.	7d. " "	" "	1893, s. 5.
1894.	8d. " "	<i>Finance Act,</i>	1894, s. 33.
1895.	8d. " "	" "	1895, s. 17.
1896.	8d. " "	" "	1896, s. 25.
1897.	8d. " "	" "	1897, s. 4.
1898.	8d. " "	" "	1898, s. 7.
1899.	8d. " "	" "	1899, s. 15.
1900.	1/- " "	" "	1900, s. 15.
1901.	1/2 " "	" "	1901, s. 12.
1902.	1/3 " "	" "	1902, s. 10.
1903.	11d. " "	" "	1903, s. 5.
1904.	1/- " "	" "	1904, s. 7.
1905.	1/- " "	" "	1905, s. 6.
1906.	1/- " "	" "	1906, s. 6.
1907. ¹	1/- " "	" "	1907, s. 18.
1908. ¹	1/- " "	" "	1908, s. 7.

¹ Also earned income rates (1907 and 1908, 9d. ; 1909 to 1913, 9d. and 1s. ; 1914, 9d., 10½d., 1s. and 1s. 2d.)—see under *Earned Income*, page 70.

ASSESSMENTS—GENERAL PROVISIONS—*contd.*

1909. ¹ 1/2 in the pound.	<i>Finance (1909-10) Act</i> , 1910, s. 65.
1910. ¹ 1/2 „ „	<i>Finance Act</i> , 1910, s. 3.
1911. ¹ 1/2 „ „	„ „ 1911, s. 14.
1912. ¹ 1/2 „ „	„ „ 1912, s. 5.
1913. ¹ 1/2 „ „	„ „ 1913, s. 3.
1914. ¹ 1/3 „ „	„ „ 1914, s. 2.

For 1914-15, in addition to the earned income relief referred to in the foot-note, the following reduced rates were allowed to *small unearned incomes*—

If any individual who has been assessed or charged to income tax, or has paid income tax either by way of deduction or otherwise, claims and proves in manner prescribed by the Income Tax Acts (see under **Abatement**, page 2) from all sources does not exceed £500, he shall be entitled to such relief from income tax as will reduce the amount of income tax on his income to the amount which would have been paid if the tax were charged on that income—

- (a) at the rate of 1s. 2d. if his income exceeds £300; and
 - (b) at the rate of 1s. if his income does not exceed £300.
- (*Finance Act*, 1914, s. 6 (1).)

The relief given under this section shall be in addition to and not in derogation of any exemption, or other relief, or abatement under the Income Tax Acts, but where any such exemption, relief, or abatement is to be determined by reference to the amount of the income tax on any sum the amount of the tax shall be calculated at the reduced rate. (s. 6 (2).)

All the provisions of the Income Tax Acts which relate to claims for exemption, relief, or abatement, or the proof to be given with respect to those claims, shall apply to claims for relief under this section and the proof to be given with respect to those claims. (s. 6 (3).)

An individual shall not be entitled to relief under this section in respect of any income the tax on which he is entitled to charge against any other person, or to deduct, retain, or satisfy out of any payment which he is liable to make to any other person. (s. 6 (4).)

Fractions.—Duty shall be charged on every fractional part of

¹ Also earned income rates (1907 and 1908, 9d.; 1909 to 1913, 9d. and 1s.; 1914, 9d., 10½d., 1s. and 1s. 2d.)—see under **Earned Income**, page 70.

ASSESSMENTS—GENERAL PROVISIONS—*contd.*

twenty shillings, provided that no duty shall be charged of a lower denomination than one penny. (*Income Tax Act, 1853, s. 3.*)

Year.—Every assessment to Income Tax shall be made for the year commencing on the days herein specified—

In Great Britain and Ireland from the sixth day of April to the following fifth day of April inclusive. (*Taxes Management Act, 1880, s. 48.*)

ASSESSMENTS—FIRST ASSESSMENTS.

Appointment of Assessors.—A meeting of commissioners shall be held to issue precepts requiring the assessors to attend before them at the appointed time and place. On attendance, the commissioners shall administer the oath to the assessors and deliver warrant and instructions.

Assessors shall serve all notices and precepts under this Act, and shall verify service. (*Income Tax Act, 1842, s. 46.*)

General Notices shall be affixed by the assessors, in the time and manner directed by the commissioners, on or near the door of the church or chapel and market-house or cross in their area (if any), or if there are none, on the door of the church or chapel nearest the area.

The notice shall require returns to be delivered within a time limit not exceeding twenty-one days, and shall be deemed sufficient notice to all persons resident in such city, town, etc.

The notice shall be renewed, if necessary, for ten days before the expiration of the time limited thereon. (*s. 47.*)

Attorney-General v. McLean (Court of Exchequer, 1863).

In proceedings under the House Tax Act, 1803, the following comments were made as to the words “residing or being” in that Act. *Pollock, C.B.*—“Now here is a man who takes not merely a shop, as far as I can learn, but a house in Fleet Street—distinctly a house—an ordinary place of residence; it may be that he does not sleep there; it may be that he sleeps altogether somewhere else, and lets out the upper part of the house in lodgings to other persons; but apparently he is there occupying a house, and using the lower part as a shop for his particular line of business. Well, certainly he *is* there—about that

ASSESSMENTS—FIRST ASSESSMENTS—*contd.*

there can be no doubt. . . . I am clearly of opinion that the word 'residing' here does not necessarily mean 'dwell,' for when they come to speak of a place where people live and sleep, they call it a dwelling-house." *Martin, B.*—
 "The evidence was, that he had a shop which he kept as a tradesman, that he was there during the course of the day for such time as he thought convenient, that he made a return to this parish in respect of other matters in which he admitted he was liable to duty. He gave no evidence as to where he lived in the sense of sleeping during the night, there was no evidence whatever of that. . . . I should say that the word 'reside' alone may mean—for instance, in the case where a man spends the day in the parish of St. Bride's, attending to his business, and is to be found there by any person who wishes to see him, and who does not think proper to be communicated with elsewhere, or at the place where he sleeps at night—he is a man much more residing at the place where he is to be seen on matters of business and conversed with, than at a place where he wishes no one to call upon him, and where, if they do call, they cannot see him during the day."

A Notice shall be served on all persons chargeable. On any neglect to make the return, the commissioners shall issue a summons for a penalty to be levied and shall assess that person. (s. 48.)

All Lists and Statements shall be delivered to the assessor, except in Schedule D cases where the commissioners shall have appointed a receiving office. (s. 49.)

See also under **Returns**, page 146.

ALL SCHEDULES.

Delivery and Inspection.—¹The Assessor shall deliver all returns to the commissioners on the appointed day. All returns made after that day shall be delivered to the commissioners. (*Taxes Management Act, 1880, s. 49.*)

¹ Surveyor may inspect and examine every return and every

¹ Refers also to House Duty.

ASSESSMENTS—FIRST ASSESSMENTS—*contd.*

first assessment both before and after such first assessment is signed and allowed. (s. 51 (1).)

¹ Returns and assessments shall be delivered, on request, into the custody of the surveyor until necessary copies or extracts are taken. (s. 51 (2).)

Errors.—¹ No assessment or charge shall be impeached

(a) by reason of mistake therein

(1) in the name of the persons liable,

(2) in the description of profits or property,

(3) in the amount of duty charged ;

(b) by variance between the notice and the certificate of charge, provided that the notice of charge is duly served on the person intended to be charged, and such notice and certificate do severally contain in substance the particulars on which the charge is made. Every such charge shall be heard and determined by the commissioners. (s. 55.)

SCHEDULES A AND B.

Assessor shall make an assessment on the return, or on his estimate to the best of his judgment if the return is not satisfactory, or the occupier is not resident, or the return is not made. (*Income Tax Act, 1842, s. 64.*)

Assessor shall deliver the assessments with the names of occupiers and proprietors, and particulars of deductions claimed, to the general commissioners. If he is unable to make the assessments, or is obstructed, he shall apply to the commissioners or the surveyor, who shall assist him. (s. 74.)

SCHEDULES A, B AND E.

¹ Assessor shall deliver his certificate of assessment and all returns on or before the day appointed. (*Taxes Management Act, 1880, s. 49.*)

¹ Where no return is made, the assessor shall make an assessment to the best of his information or judgment. (s. 50 (1).)

¹ The certificate of assessment shall be delivered to the surveyor forthwith after the delivery to the commissioners and their acceptance thereof. (s. 50 (2).)

SCHEDULES A AND B.

If required by the inspector or surveyor or by the commissioners,

¹ Refers also to House Duty.

ASSESSMENTS—FIRST ASSESSMENTS—*contd.*

the assessor shall give notice to the overseers of the poor to produce the rate book or a copy thereof, and also a true copy of the last rate made. The assessor shall declare in writing on what proportion of the full value the rates are made. If the surveyor or inspector shall satisfy the commissioners that the assessments are not correct, they shall examine on oath the assessor and overseers as to the value and rating of the properties and as to properties not rated.

The surveyor shall examine the assessments with the last poor rate, and may rectify them before the commissioners sign. (*Income Tax Act*, 1842, s. 75.)

The commissioners and officers may inspect all public rate books and take copies and extracts without fee. (*Income Tax Act*, 1842, s. 76. *Taxes Management Act*, 1880, s. 39.)

SCHEDULES A, B AND E.

¹ The surveyor shall rectify any assessment in cases of omissions, undercharges, and allowances, exemptions, or abatements wrongly deducted, discovered before it is signed and allowed. (*Taxes Management Act*, 1880, s. 52.)

¹ The commissioners shall take the assessments into consideration within reasonable time of the surveyor's examination and shall allow or rectify the same on the surveyor's objection, to the best of their judgment. (*Income Tax Act*, 1842, s. 79. *Taxes Management Act*, 1880, s. 56.)

SCHEDULE D.

Assessor's List.—Assessor shall make out an alphabetical list of persons served showing—

- (1) where returns are received,
- (2) where no returns are received,
- (3) where persons require special assessment,
- (4) persons returned as lodgers and inmates.
- (5) persons chargeable within and having their residence outside the parish.

The list shall be delivered to the inspector or surveyor, who shall serve notices in cases omitted and on new residents. (*Income Tax Act*, 1842, s. 57.)

Assessor shall appear before the commissioners and make oath of

¹ Refers also to House Duty.

ASSESSMENTS—FIRST ASSESSMENTS—*contd.*

the service of notices, the fixing of general notices, and the completeness of the list of notices served delivered to the surveyor. (s. 58.)

An Abstract of the Returns shall be made by the clerk to commissioners into books, on forms provided by the Board, which shall be laid before the commissioners. The abstract shall contain the names of persons served and the amounts of the returns.

The Returns shall be numbered and filed in the commissioners' office, and kept so long as the accounts shall remain unpaid to Her Majesty. The surveyor or inspector shall have free access at all reasonable times to take copies of or extracts from the returns which are deemed necessary. (s. 59.)

Assessor's Estimate.—When no returns are received the assessor shall estimate the liability and return particulars to the commissioners. (*Taxes Management Act*, 1880, s. 50 (1).)

On delivery to the commissioners of any estimate and their acceptance thereof, they shall forthwith deliver it to the surveyor for examination. (s. 50 (2).)

Additional Commissioners' Assessments.—All returns, except returns to special commissioners (see under **Special Assessments**), shall be considered by the additional commissioners within a reasonable time after the surveyor's examination thereof. Assessments shall be made on the returns if they appear satisfactory and the surveyor makes no objection thereto. (*Income Tax Act*, 1842, s. 111.)

Surveyor may require the additional commissioners to state and sign a case for the general commissioners, if he is dissatisfied with their decision. The general commissioners shall return an answer according to which the assessment shall be altered or confirmed. (s. 112.)

Additional commissioners shall make assessments as they think fit—

- (1) where no return is made,
- (2) where they are dissatisfied with any return made,
- (3) where the surveyor objects in writing to the return,
- (4) where the insufficiency of the return is alleged. (s. 113.)

Additional commissioners may refer any return to the general commissioners, who may make the enquiry authorised on appeal and determine what assessment shall be made. (s. 114.)

ASSESSMENTS—FIRST ASSESSMENTS—*contd.*

Surveyor may examine assessments at all reasonable times before the delivery to the general commissioners, and certify any errors to the additional commissioners, who shall amend it as they judge necessary. (s. 115.)

Surveyor may object to any assessment, and the additional commissioners shall certify the objection, with reasons for making the assessment, to the general commissioners. The surveyor shall give notice of his objection to the party concerned so that he may appear before the general commissioners in support of the assessment. (s. 116.)

Additional commissioners shall deliver signed certificates of assessments containing the names and the amounts which ought to be charged.

No assessment shall be delivered to the respective parties until fourteen days after such delivery and the inspector or surveyor has had notice thereof. (s. 117.)

New Residents.—If any person shall come to reside in any parish in which he has not been charged for the same year, the assessor, collector, inspector, or surveyor shall give him notice to declare within fourteen days where he was charged, or to deliver a statement for the purpose of being assessed.

The commissioners shall assess such person unless he shall prove that he has been assessed elsewhere. (s. 177.)

ASSESSMENTS—ADDITIONAL FIRST ASSESSMENTS—

If the surveyor discovers, after the first assessments have been signed and allowed, any omission from or undercharge in the first assessments, or that a person charged has not made a full and proper, or any return, or that any unauthorised allowance, deduction, abatement or exemption has been granted; in the case of

Schedules, A, B and E.—¹ He shall, within four months (now three years—*Finance Act, 1907, s. 23 (2)*) of the expiration of the year of assessment, certify particulars to the general commissioners, who shall sign an additional first assessment, subject to appeal as against first assessments. (*Taxes Management Act, 1880, s. 52 (1).*)

Schedule D.—The additional commissioners shall, within four

¹ Refers also to House Duty.

ASSESSMENTS—ADDITIONAL FIRST ASSESSMENTS—*contd.*

months (now three years—*Finance Act, 1907, s. 23 (2)*) of the expiration of the year of assessment, make an assessment in an additional first assessment, subject to the objection of the surveyor and to appeal. (*Taxes Management Act, 1880, s. 52 (2).*)

King v. Kensington Income Tax Commissioners (Court of Appeal, 1914).

Mr. F. A. Aramayo, residing in the Borough of Kensington, had been a partner in a foreign firm whose business was sold as from 12th January, 1907. He was assessed to income tax by additional assessment for the year commencing 6th April, 1907, in respect of profits presumed to have been remitted to him in this country in that year (such profits being necessarily presumed to have arisen abroad prior to 12th January, 1907). It was held in the High Court—

(1) that, under Section 52 of the Taxes Management Act, 1880, the surveyor of taxes is entitled to put the additional commissioners in motion without legal evidence of the liability of the person to be assessed (*Bray, J.*—“We must ask ourselves: Has the surveyor any rights given him to obtain legal evidence? He has none. Up to this point he has no right whatever to see the books of the taxpayer, or to make anybody in the service of the taxpayer or anybody else make an affidavit. It would seem, therefore, most unlikely that the Legislature should have intended by the word ‘discover’ that he was to ascertain by legal evidence. It provides for a later trial, if I may call it so, of the question when either party appeals”):

(2) that the assessment for the year 1907-8, based on remittances to this country in the three preceding years as required by Case V of Schedule D (see page 292) was yet in respect of profits presumed to be remitted in 1907-8:

(3) that as the assessment was signed by the additional commissioners within three years after the year of assessment 1907-8, it was immaterial that it was signed by the

ASSESSMENTS—ADDITIONAL FIRST ASSESSMENTS—*contd.*

general commissioners after the expiration of the three years :

(4) that section 108 of the Income Tax Act, 1842 (see page 8) only requires such an assessment to be made by the commissioners for the City of London if the person liable has made a return to such commissioners.

In the Court of Appeal, however, the decision as regards (4) was reversed and the assessment made by the Kensington commissioners was declared illegal.

Schedule E.—Any person holding a public office or employment of profit, becoming entitled to any additional salary, fees, or emoluments beyond the amount of his liability at the commencement of the year, shall be charged for the same by additional or supplementary assessment. (*Income Tax Act*, 1853, s. 53.)

ASSESSMENTS—APPEALS—

All Schedules.—¹ So soon as any assessment is signed and allowed, notice of the appeal meeting shall be given as prescribed (see below under Schedules A and D), and the clerk shall inform the surveyor thereof. (*Taxes Management Act*, 1880, s. 57 (1).)

¹ A person aggrieved by any first or first additional assessment shall, on giving ten days' notice of objection to the surveyor within the time limited for hearing appeals, be entitled to appeal to the general commissioners within twenty-one days after the date of the notice of assessment. (s. 57 (3).)

On the removal of a person charged to another district, the Board may allow an appeal to the commissioners for that district. (*Income Tax Act*, 1853, s. 55.)

¹ No assessment delivered to the general commissioners shall be altered before the time limited for hearing appeals (and then only in cases of charges appealed against) except where such alteration is specially provided for (viz.—on surveyor's objection). (*Taxes Management Act*, 1880, s. 57 (4).)

¹ General commissioners shall give notice to the appellant, and meet from time to time until all appeals are determined. (s. 57 (5).)

¹ Commissioners shall not alter any assessment or surcharge

¹ Refers also to House Duty.

ASSESSMENTS—APPEALS—*contd.*

unless it shall appear to them, from the examination of the appellant or from other lawful evidence to be produced by him, that such person is overcharged. (s. 57 (6).)

Rex v. General Commissioners of Income Tax for Offlow
(*High Court of Justice*, 1911).

On an appeal by the owner and occupier of certain licensed premises, the commissioners refused to hear the evidence of an expert valuer, being of the opinion that it would be of no assistance to them. It was held that a *mandamus* would not lie for the purpose of compelling the commissioners to hear such evidence. *Lord Chief Justice*.—"The rule was that, if what had happened before the inferior tribunal was a refusal to hear the case a *mandamus* would lie; but if what had taken place was, in fact, that upon the materials before them they had come to a wrong decision, that could not be made a ground for directing a re-hearing . . . In this case the commissioners, in the exercise of their judgment, had, rightly or wrongly, come to the conclusion that the expert evidence which the appellant intended to offer would be of no assistance to them; but they did not decline to hear the evidence so as to bring them within the rule. By s. 57 (6) of the Taxes Management Act, 1880, a person appealing was entitled to adduce 'lawful evidence,' and in many cases expert evidence would be lawful evidence, and if the commissioners had made any such general rule as that they would never hear expert evidence, then a *mandamus* would issue against them. . . . It appears that the appellant's advocate had told the commissioners the nature of the evidence he was about to call, so that they knew what its effect would be before they decided not to hear it. If what they had done amounted to a misdirection of themselves in law an appeal would have lain by way of case stated."

It will be noted that the appellant could have followed the procedure indicated in s. 47 of the Income Tax Act, 1853, page 26, but in that case it would have rested with the commissioners to select the valuer to be called.

ASSESSMENTS—APPEALS—*contd.*

- ¹At every appeal the surveyor and assessor may attend and
- (1) give reasons in support of the assessment or surcharge,
 - (2) produce evidence in support thereof,
 - (3) have liberty to be present during all times of hearing appeals and of the commissioners determining the same. *Taxes Management Act, 1880, s. 57 (7).*)

King v. Brixton Income Tax Commissioners and another
(*High Court of Justice, 1913*).

It was held that the Surveyor of Taxes may not remain with the Commissioners while they are arriving at their decision, if the appellant has been required to withdraw. *Attorney-General*.—"I have considered subsection 7 of Section 57. I am quite satisfied that the Surveyor of Taxes has no more right to be present when the Commissioners are considering their decision or to take any part whilst they are determining it, or to answer any questions, than any other party to an appeal. . . . I read the section as meaning that although strictly speaking he is not a party, he is to be treated as a party, which gives him power to be present, to call evidence and to argue, and to listen to the judgment." Approved by the Court.

¹Appeals once determined shall be final ; neither the decision nor the assessment made thereon shall be altered at any subsequent meeting or other place except by order of the High Court when a case has been stated. (s. 57 (10).)

¹Commissioners may increase any assessment on hearing any appeal concerning it. (s. 57 (8).)

¹Commissioners' determination after appeal on an objection made by the surveyor to any assessment or estimate shall preclude the surveyor from making a further charge for the same year on the same person for the same matter. (s. 58.)

¹General commissioners may permit any barrister or solicitor to plead before them on any appeal, for the appellant or officers, either *vivâ voce* or by writing. (*Finance Act, 1898, s. 16.*)

If upon any appeal under the Income Tax Acts the general commissioners refuse to permit a barrister or solicitor to plead before them, or to hear any accountant, the appellant, in lieu

¹ Refers also to House Duty.

ASSESSMENTS—APPEALS—*contd.*

of proceeding, may appeal to the special commissioners, who are required to hear such barrister, solicitor or accountant.

Accountant, in this section, means a person who has been admitted as a member of an incorporated society of accountants. (*Revenue Act*, 1903, s. 13.)

Schedules A and B.—¹Inhabited House Duty appeals shall be determined in like manner as Schedule A appeals. (*Taxes Management Act*, 1880, s. 57 (2).)

Any owner or other person in receipt of rent may appeal, if aggrieved, as if the assessment were made on him. (*Finance Act*, 1896, s. 28.)

Notice of assessment, and of the day for hearing appeals, shall be given as soon as any assessment is signed or allowed, either by the delivery of a copy of the assessment to the assessor for the inspection of persons charged, and the fixing of public church door notices of the day of appeal, or by delivery of particulars of each assessment to each person charged.

Such notice shall be given at least fourteen days before the day of appeal. (*Income Tax Act*, 1842, s. 80.)

Schedule E.

Berry v. Farrow and Searcy (*High Court of Justice*, 1913).

It was held that the commissioners are required by the Income Tax Act, 1842, s. 80, to give notice of assessments under Schedules A and B either by public notice or by personal notice to each person charged, and that this requirement is extended to assessments under Schedule E by s. 188 of that Act (page 156), and to additional first assessments by the Taxes Management Act, 1880, s. 52. By Section 16 of the latter Act (page 75), a personal notice may be delivered to the person charged or left at his usual or last known place of abode.

Plaintiff succeeded in an action for damages for illegal distraint inasmuch as the only notices of assessment served were left at the office of the company of which he was manager. He rarely attended such office and did not receive the notices. In these circumstances the office was not his usual or last known place of abode.

¹ Refers also to House Duty.

ASSESSMENTS—APPEALS—*contd.*

Valuation of the property may be ordered by the commissioners on any appeal, and a valuer named by them. The costs may be ordered to be paid from the collector's accounts if the commissioners consider that such costs and charges are not due to the default of the appellant; otherwise the appellant may be required to pay such costs. (*Income Tax Act, 1842, s. 81.*)

The appellant may require valuation as above, in which case the commissioners shall name a person of skill to make such valuation. Upon the valuation being verified on oath by the person making it, the assessment shall be made accordingly. (*Income Tax Act, 1853, s. 47.*)

See *Rex v. General Commissioners for Offlow*, page 23.

Commissioners may, on appeal, decrease or increase the assessment according to the rack-rent as shown by an agreement made within seven years, or by other evidence. (*Income Tax Act, 1842, s. 82.*)¹

Schedule D.—Notice of appeal shall be given within ten days as in Taxes Management Act, 1880, s. 57 (3), see page 15.

An extension of time for the hearing of appeals may be allowed on account of appellant's absence or illness, or his agent, clerk or servant may be heard. (*Income Tax Act, 1842, s. 118.*)

General notice of the appeal day shall be fixed up in the commissioners' office or left with their clerk, and shall also be fixed on or near to the door of the church or chapel of the parish (or of an adjoining parish if the parish concerned has no church or chapel).

Appeals shall be heard within a reasonable time. No appeal shall be heard after the time limited in such notice, save on account of appellant's absence from the realm, when a postponement may be allowed, or proof allowed other than the oath of the appellant. (s. 119.)

On [receiving notice of appeal, and where they have allowed an objection made by the surveyor, the commissioners shall direct their precept to the appellant to return a schedule containing such particulars as they shall demand under the authority of this Act, respecting the property or profits. The precept shall be binding. It shall be fixed to the church door failing service on party.

ASSESSMENTS—APPEALS—*contd.*

Surveyor shall have access to the schedule at all reasonable times and may take copies thereof. (s. 120.)

Surveyor may object to the schedule, and serve a notice of objection on the appellant. No assessment shall be confirmed or allowed until the appeal shall be heard and determined. (s. 121.)

General commissioners may disallow the objection and amend or confirm the assessment according to the schedule, *or*, may direct the assessor to give notice to the appellant to appear to verify the schedule or return on oath. The schedule may be amended before the oath is taken. The commissioners may assess accordingly if satisfied therewith, and their decision shall be final. (s. 122.)

General commissioners may put any question in writing touching the assessment or schedule or its contents, and may require written answers within seven days, or the appellant may appear within seven days and answer *vivâ voce*; his answer shall be recorded in writing. The appellant may answer without taking an oath or may refuse to answer any question. He may amend any part of the recorded answers before swearing to them. (s. 123.)

Commissioners may permit the appellant to swear that the schedule is true and contains a full and true account of all deductions made, and that the answers are true. (s. 124.)

General commissioners may summon any person to give evidence on oath, except the appellant's clerk, agent, servant or other person confidentially employed by him, who shall be examined subject to the same restrictions provided for the *vivâ voce* examination of the appellant. (s. 125.)

General commissioners may make their assessment according to the schedule.

If the appellant, or his servant, etc., neglects to appear or to return the schedule, or to swear to the schedule, or if the surveyor's objection to the schedule is not appealed against in time, or where the commissioners agree to allow the objection, the commissioners shall settle the assessment to the best of their judgment. (s. 126.)

Where an increased assessment is made upon the amount in the return or the schedule, or the commissioners shall discover that an increase should be made (whether on surcharge or otherwise), they may charge—

(1) where no statement or schedule is delivered, on a sum not

ASSESSMENTS—APPEALS—contd.

exceeding treble the amount which ought to be charged according to the rate of income tax ;

- (2) where a statement or schedule has been delivered, on a sum not exceeding treble the amount beyond the amount stated therein, the treble duty being added to the assessment ; unless the person assessed shall make it appear to the satisfaction of the commissioners that the omission did not proceed from fraud, covin, art, or contrivance, or any gross or wilful neglect. (s. 127.)

An additional statement or schedule (where a person discovers that an error was made in the first schedule) or a statement or schedule (where none was previously delivered) shall be allowed to be delivered at any time before proceedings shall be instituted for the penalty for an error in a statement or schedule, or failure to deliver one. In this case the party shall not be subject to proceedings. On proof that no fraud or evasion was intended, the judge or commissioners may stay proceedings. There shall be no liability to penalty when the commissioners grant further time to prepare a schedule. (s. 129.)

See dicta in *Attorney-General v. Till*, 1909, page 128, as to the effect of this provision.

See also *Special Appeals*, page 324.

Mandamus.—See *Rex v. Commissioners for Offlow*, page 23.

Petition of Right.

Holborn Viaduct Land Co., Ltd. v. Regina (High Court of Justice, 1887).

Held that a Petition of Right does not lie, to obtain repayment of tax paid under Schedule A and under Schedule D also. *Mr. Justice Stephen*.—"What they ought to have done would have been, when they found out their mistake, to have appealed against the assessment, upon the ground that it proceeded upon an erroneous return. As they did not do so, I think they neglected their proper remedy, and that they cannot bring a Petition of Right. . . . (As to Taxes Management Act, 1880, s. 60, see page 70). That, I think, constitutes the Inland

ASSESSMENTS—APPEALS—contd.

Revenue Commissioners the judges of whether or no a person has been assessed more than once.”

Bankruptcy Proceedings.

Calvert v. Walker (*High Court of Justice*, 1899).

It was held that an assessment to income tax, in respect of which proof had been made in bankruptcy proceedings, could not be expunged on the ground that the profit assessed had not been made. *Wright, J.*—“There is a mere administrative assessment with a special mode of appeal provided, which must be followed. I cannot think it possible that it is competent to the Bankruptcy Court on the invitation of the Trustees to reopen questions of that kind.”

Appellant's Oath.

Regina v. Special Commissioners of Income Tax (in re G. Fletcher) (*Court of Appeal*, 1894).

Rex v. Chew and others (1894).

The special commissioners declined to require an appellant to verify on oath a schedule with which they were dissatisfied. They further refused to state a case, upon which the appellant obtained a Rule Nisi for a Mandamus upon the commissioners. It was held that there was no point of law on which a Mandamus should issue, and that the commissioners were not bound to put the appellant on oath. *Esher, M.R.*—“I am inclined to think that the point which the appellant meant to take was that his oath to the accuracy of these items was to be conclusive, whatever the other evidence might be. . . . In my opinion, the moment that contention is raised, it must be obvious to everybody that it is an idle contention.” *Lopes, L.J.*—“There was before the commissioners originally the statement (*i.e.*, the return) of the appellant, the assessment that had been made on that, and the schedule. The commissioners, having the schedule before them, examined it, and upon the examination, taking it together with the statement and also taking into consideration what they knew with regard to the appellant, came to the

ASSESSMENTS—APPEALS—*contd.*

conclusion that that schedule contained statements by him upon which they could not place any reliance. The appellant . . . declined to produce any account verifying any of these statements, or his pass-book or any other documents that were asked for. The Commissioners came to the conclusion that they were satisfied with the assessment and dissatisfied with the schedule. That seems to me to be a decision upon the facts and upon the evidence which was then before them, and one which they were fully justified in arriving at." *Rigby, J.*—"I find nothing in the Act that authorises a man to say, 'You shall put me upon oath and take my oath.'"

ASSESSMENTS—ADJUSTMENT AT END OF YEAR—

Commencement.—In the case of a profession, trade, or vocation set up or commenced within the year of assessment, or within the three preceding years (upon the average of which the profits are to be taken under the Income Tax Acts), if the profits arising therefrom during the year of assessment fall short of the sum assessed, as proved at the end of the year of assessment to the satisfaction of the commissioners who have, or could have, made the assessment, the person charged or chargeable shall be entitled to be charged on the actual amount of the profits or gains so arising, and if he has paid the full amount of the tax on the profits computed in accordance with the Tax Acts, be entitled to repayment of the amount overpaid. (*Finance Act, 1907, s. 24 (2).*)

Instead of the words in brackets above, read "preceding the year of assessment." (*Clause in Revenue Bill, 1914, s. 20 (1).*)

Loss.—In the event of a loss being sustained by any person during the year, in any trade, manufacture, adventure, or concern, or profession, employment, or vocation, carried on by him solely or in partnership (see also under **Schedule B**, page 193),—it shall be lawful for him, upon giving notice in writing to the surveyor of taxes for the district within six months after the year of assessment, to apply to the general commissioners (or special commissioners—*Finance Act, 1907, s. 27*) for an adjustment of his liability by reference to the loss and to the aggregate amount of his income for that

ASSESSMENTS—ADJUSTMENT AT END OF YEAR—*contd.*

year estimated according to the several rules and directions of the said Acts. (*Customs and Inland Revenue Act, 1890, s. 23 (1).*)

The said commissioners shall, on proof to their satisfaction of the amount of the loss and of the payment of income tax upon the aggregate amount of income, give a certificate authorising repayment of so much of the sum paid for income tax as would represent the tax upon income equal to the amount of loss, and such certificate may extend to give exemption or relief by way of abatement. Upon receipt of the certificate the Board shall cause repayment to be made. (s. 23 (2).)

Where repayment has been made in any year to any person, he shall not be entitled to claim, or be allowed, a deduction on the assessment for a subsequent year by reference to the amount of loss in respect whereof repayment has been obtained. (s. 23 (4).)

Loss “on ordinary commercial balance sheet” to include all transactions—see *Revell v. Edinburgh Life Insurance Co. (under Interest, page 89)*.

High Court Case may not be stated on this application for adjustment at end of year. See *Bruce v. Burton (under High Court Cases—page 77, also case on page 78)*.

Loss in the production of a railway signal. See *Grimes v. Lethem (under Schedule D, Cases I and II, page 283)*.

Cessation—death—bankruptcy—specific cause.—In the event of a person ceasing to exercise a profession, or to carry on a trade, employment, or vocation, or dying, or becoming bankrupt before the end of the year, or from any other specific cause being deprived of or losing the profits or gains on which the computation of duty was made (provided that if any person has succeeded to the trade or business, no abatement can be made unless it is proved that the profits have fallen short from some specific cause since or by reason of the succession), it shall be lawful for such person, or his executors or administrators, to make application to the general commissioners within three calendar months after the end of such year, and on due proof thereof to their satisfaction the commissioners shall cause the assessment to be amended, as the case may require, and give such relief as shall be just, and in cases requiring the same the commissioners shall direct repayment of the sum overpaid. (*Income*

ASSESSMENTS—ADJUSTMENT AT END OF YEAR—*contd.*

Tax Act, 1842, s. 134.) See also last paragraph of Schedule D, Cases I and II, Rule 4 (page 287).

Furtado v. City of London Brewery Co., Ltd. (*Court of Appeal*, 1913).

It was held that an application under Section 134, *Income Tax Act*, 1842, is not an appeal in respect of which a case for the opinion of the High Court may be stated by the commissioners under s. 59, *Taxes Management Act*, 1880.

Cessation.—In the event of the discontinuance in any year of a profession, trade or vocation, any person charged or chargeable with income tax in respect thereof shall be entitled to be charged on the actual amount of the profits or gains arising therefrom in that year, and shall also, if he proves to the satisfaction of the commissioners who have, or could have, made the assessment, that the total amount of tax paid during the three previous years in respect of that profession, etc., exceeds the total amount which would have been paid if he had been assessed in each of those years on the actual profits, be entitled to repayment of the excess. (*Finance Act*, 1907, s. 24 (3).)

ASSESSMENTS—SURCHARGES—

By Surveyor.—Where deductions are made which are contrary to the Act, or without an account thereof being delivered, the surveyor may surcharge the assessment to the amount of the duty lost, which surcharge shall stand part of the assessment. (*Income Tax Act*, 1842, s. 60, *Schedule A*, No. IV, Rule 14.)

Surveyor may examine any return and assessment, and if dissatisfied therewith, or if he discovers any error in the assessor's estimate, or an illegal deduction, he may charge the same as it ought to be charged, or may certify the omission or under-assessment (see *Taxes Management Act*, 1880, s. 63). (*Income Tax Act*, 1842, s. 161.)

¹ Surveyor discovering any omission to assess may (within three years after the expiration of the year of assessment—*Finance Act*, 1907, s. 23 (2),) charge the person liable and certify the charge to the general commissioners, who, on oath of the service of a notice to

¹ Refers also to House Duty.

ASSESSMENTS—SURCHARGES—*contd.*

the person charged, shall sign the certificate, subject to appeal. (*Taxes Management Act*, 1880, s. 63 (1).)

¹**Notice.**—Notice of the surcharge, with particulars thereof, shall be delivered by the surveyor to the person charged. (s. 63 (2).)

¹The certificate and the oath of its service, by the person serving it, shall be sufficient proof of the contents of the notice, unless it is otherwise proved. (s. 63 (3).)

Delivery to Commissioners.—¹The charge shall be signed only if the certificate shall be delivered within the year (now three years—*Finance Act*, 1907, s. 23 (2)) following the year of assessment. (*Taxes Management Act*, 1880, s. 63 (5).)

¹Delivery of any certificate of charge to the clerk to commissioners, in default of a meeting of the commissioners, shall be deemed sufficient delivery. (s. 63 (6).)

¹In default of the meeting of the commissioners within the time limited for hearing appeals, or if the surveyor shall not have had notice of the commissioners' meeting, they shall, at their first meeting thereafter, sign and allow the certificates, and afterwards hear and determine the appeals therefrom. (s. 63 (7).)

Party's Declaration.—¹Party charged shall deliver to the surveyor (within ten days from the date of the notice) a true return containing all the particulars required by the Tax Acts, or a written notice abiding by the previous return. (s. 64 (1).)

¹A declaration shall be annexed thereto (signed by one witness at least), alleging the grounds and cause of his neglect to make a return, or of each omission or claim to exemption, abatement, or deduction in the return; the declaration shall also state that the return or the amended return is a true and perfect return of all the particulars required by the Tax Acts, or that the neglect, omission or claim was not with intent to defraud the revenue. (s. 64 (2).)

Surveyor's Objection.—¹The surveyor may object to the return or declaration and serve a notice of objection on party. He shall certify his objection to the general commissioners who shall make an assessment according to the surveyor's objection. (s. 64 (3).)

Surveyor's Satisfaction.—¹The surveyor may certify his satisfaction with the return or declaration to the general commissioners, who shall charge thereon in single duty. (s. 64 (4).)

¹ Refers also to House Duty.

ASSESSMENTS—SURCHARGES—*contd.*

Time Limit.—¹ Every person surcharged shall have ten days after the service of the notice within which to deliver his amended return to the surveyor, during which the certificate shall not be signed by the commissioners or the appeal heard. (s. 65 (1).)

¹ If the person, within ten days, delivers a return and declaration, which the surveyor objects to, such return shall be sufficient notice of appeal against the surcharge to the commissioners. (s. 65 (2).)

Appeal without previous notice.—¹ The commissioners may, on the appearance of the person charged or of his agent, on the appeal day, hear his appeal, although no previous notice of appeal was given or a return or declaration delivered. (s. 65 (3).)

No attendance or return.—¹ In default of appearance on the appeal day, or of the delivery of a return, the certificate of charge shall be confirmed. (s. 65 (4).)

¹ Appeals against surcharges shall be heard as appeals against first assessments. (s. 67 (1).)

¹ Postponement of appeals may be allowed on account of absence or sickness or other sufficient cause preventing party from appealing or from attending within twenty-one days of the notice. (s. 67 (2).)

Treble duty charged.—Where the surcharge is allowed on appeal, no declaration having been delivered, or the commissioners being dissatisfied with the declaration, the assessment shall be made in treble duty. (*Income Tax Act, 1842, s. 162.*)

¹ On every surcharge allowed on appeal, in whole or in part, the assessment shall be in treble duty. (*Taxes Management Act, 1880, s. 68 (1).*)

¹ **Treble Duty not charged.**—In the following cases the commissioners may remit treble duty in whole or in part and charge single duty—(a) if a satisfactory declaration is delivered on appeal, (*Income Tax Act, 1842, s. 162*) ;

(b) if the commissioners consider that there was reasonable cause of controversy on the part of the appellant, or that he is not guilty of any wilful default, neglect, omission or claim, or of intent to defraud the revenue (*Income Tax Act, 1842, s. 162 and Taxes Management Act, 1880, s. 68 (2)*) ;

(c) if the commissioners are of opinion that the surveyor might have amended the assessment by means of the original return, or

¹ Refers also to House Duty.

ASSESSMENTS—SURCHARGES—*contd.*

that the person charged was prevented from making an amended return by absence or sickness or other sufficient cause. (*Taxes Management Act*, 1880, s. 68 (2).)

**ASSESSMENTS—SUPPLEMENTARY
ASSESSMENTS—**

¹ A certificate of surcharges shall be sufficient authority for the commissioners to cause a supplementary assessment to be made from time to time.

It shall include all surcharges according to the certificates of surcharge amended, where required, according to the commissioners' determination, all treble duties in whole or in part, assessed over and above the rates prescribed, and all penalties imposed by the commissioners within the year of assessment for offences against the Tax Acts. (*Taxes Management Act*, 1880, s. 69.)

ASSESSMENT BOOKS—

Schedule D.—Commissioners shall have entered in their books of assessment the several amounts of the sums assessed by them, and shall from time to time make out, and transmit to the commissioners of inland revenue, accounts of the amount of duty assessed, distinguishing the amount charged on each person.

They shall also, from time to time, as soon as can conveniently be done, make out and transmit to the commissioners of inland revenue lists containing the name, description and place of residence of every person assessed, according to an alphabetical arrangement of the respective parishes or places of residence. (*Income Tax Act*, 1842, s. 136.)

The assessments under Schedule D shall be entered in books, with the names, descriptions, and places of abode of persons, corporations, companies or societies to be charged. The entries shall be numbered progressively, or lettered, or numbered and lettered. (s. 137.)

All Schedules.—¹ When the general commissioners and land tax commissioners have signed and allowed any assessment to the duties or land tax, and the time limited for hearing appeals has elapsed, the clerk to commissioners shall number the pages, and cast up and total the sums in each page. (*Taxes Management Act*, 1880, s. 61 (1).)

¹ Refers also to House Duty.

ASSESSMENTS—BOOKS—*contd.*

¹ Clerk to commissioners shall forthwith, and before the next ensuing receipt, transmit to the commissioners of inland revenue an account on the form prescribed by them, showing the total sums to be paid by and for each parish, with the names and addresses of the collectors. (s. 61 (2).)

¹ The commissioners shall deliver to the surveyor a duplicate (signed and sealed) of every income tax assessment. The assessments shall be kept by their clerk. (s. 83.)

¹ Additional assessments shall from time to time be added to the first assessments by being included in a separate form of assessment. (s. 84 (1).)

Collectors' Duplicates.—¹ As soon as any assessments are signed and the appeal time has expired, the clerk shall prepare one duplicate of every land tax assessment, and two duplicates of every income tax and inhabited house duty assessment, which shall be signed and sealed by the commissioners. (s. 83 (1).)

¹ Commissioners shall deliver one land tax duplicate and one income tax duplicate, with their warrant, to the collector. (The second income tax duplicate is delivered to the surveyor (s. 83 (2).)

Commissioners shall deliver to the collector, with their warrant, a duplicate of assessment, with the names and descriptions of the persons charged, except in cases of persons assessed under a number or letter. (*Income Tax Act*, 1842, s. 138.)

Commissioners shall, within one month of the first day of hearing appeals, all appeals being heard and determined, deliver to the collectors their duplicates and warrants. (s. 172.)

¹ Additional duplicates shall be added to the first duplicate by being included in a separate form. (*Taxes Management Act*, 1880, s. 84 (1).)

¹ A collector who has been required to give security shall not have delivered to him his duplicate and warrant, until he has given such security. (s. 83 (3).)

ASSESSORS—

¹ **Assessor** means the person appointed to be assessor of income tax and inhabited house duties for any parish, in

¹ Refers also to House Duty.

ASSESSORS—*contd.*

conformity with the rules and directions of this Act and the Tax Acts, and includes the surveyor of taxes acting as assessor when so required to act. (*Taxes Management Act, 1880, s. 5.*)

Appointment shall be made by the general commissioners. (*Income Tax Act, 1842, s. 36.*)

¹ The general commissioners (before 10th April in England and 30th April in Scotland) shall direct their precept to such inhabitants and such number of them as they think most convenient, requiring them to appear at an appointed place and time, not exceeding ten days after the date of their precept. (*Taxes Management Act, 1880, s. 42, (1).*)

¹ Appointment shall be made of such inhabitants as the general commissioners think fit, to whom they shall give instructions how to make assessments, and appoint a day (not later in England than July 20th and in Scotland than the first Wednesday in August) to bring in their certificates of assessments to be verified on oath. (*s. 42 (2).*)

Penalty for refusal to serve or for misconduct. See page 125.

¹ **Duration of Appointment** shall be for the year commencing 6th April, and until other assessors are appointed for the same parish and for the same duties. (*s. 42 (3).*)

In case of non-appointment, the last appointment shall continue in force until other appointments are made. (*s. 42 (4).*)

¹ **Notice of Continuance in Office** as aforesaid shall be given by the general commissioners, or by the surveyor, requiring attendance at an appointed time and place to receive papers. (*s. 42 (5).*)

Non-inhabitants appointed.—Where two able and sufficient inhabitants cannot be found, persons residing near the parish shall be appointed. (*s. 42 (6).*)

On any failure to appoint, whereby the assessment is likely to be delayed, the magistrates or justices or any two of them shall appoint an assessor on notice being given by the surveyor. (*s. 42 (7).*)

Exemption.—No person inhabiting any city, borough, or town corporate shall be compelled to be assessor for a place outside its limits. (*s. 44.*)

Declaration of office shall be taken before acting. (*s. 45.*)

¹ Refers also to House Duty.

ASSESSORS—*contd.*

Instructions shall be asked of the commissioners or of any inspector or surveyor, when the assessor is unable to make the assessments or is obstructed. (*Income Tax Act, 1842, s. 74.*)

See under **Assessments**, pages 15 to 18, as to delivery of returns, estimates, etc.

Surveyor shall act as assessor in certain cases—see under **Surveyor**, page 331.

BOARD AND OFFICERS—

Board means the commissioners of inland revenue for the time being, or any two of them. (*Taxes Management Act, 1880, s. 5.*)

The duties shall be under the direction and management of the commissioners of inland revenue, who are empowered to appoint officers, and to do all things necessary for raising, collecting, receiving and accounting for the duties and for putting this Act into execution throughout the United Kingdom. (*Income Tax Act, 1853, s. 4.*)

Appointment shall be by Her Majesty, during whose pleasure the commissioners shall hold office. (*Inland Revenue Regulation Act, 1890, s. 1 (1).*)

Commissioners shall have all necessary powers for executing acts, and shall be subject to Treasury authority, control and direction. (*s. 1. (2).*)

Quorum shall be two commissioners, except where acts are authorised to be done by one commissioner. (*s. 2.*)

Chief Office shall be in London, and other offices shall be in such places as are deemed necessary. Offices shall be open on the prescribed days and during the prescribed hours. (*s. 3.*)

Powers required to be exercised at the chief office may be exercised in the City of London and Metropolitan Police District. (*s. 37, (1).*)

References to commissioners of excise, stamps, and taxes shall refer to the commissioners of inland revenue. (*s. 37 (2).*)

Accountant General shall hold office during the pleasure of the Treasury. (*s. 6.*)

Officers shall be appointed by the Board (unless the Treasury otherwise direct) for collecting, receiving, managing and accounting for inland revenue, where they are not required by law to be

BOARD AND OFFICERS—*contd.*

appointed by any other authority. Appointments shall continue notwithstanding the death of any commissioners. Officers may be suspended, reduced, discharged or restored by the commissioners.

They may be required by the commissioners to give security when authorised to receive or collect money. (s. 4.)

Collector of Inland Revenue means the person appointed by the Board to be a collector, and the officer for the collection and receipt of revenues and duties of excise, stamps and taxes or his deputy. (He is now described as **Collector of Customs and Excise** under Order in Council dated 15th February, 1909.) (*Taxes Management Act*, 1880, s. 5.)

Treasury shall settle allowances for special commissioners, surveyors and other officers, and discharge all incidental expenses. (*Income Tax Act*, 1842, s. 186.)

Salaries, etc., are not assignable before payment. (*Inland Revenue Regulation Act*, 1890, s. 9.)

Surveyor.—See separate heading, page 331.

BRITISH MUSEUM—

Schedule A.—To have like exemptions as are granted to colleges, etc., under Schedule A, No. VI on lands, etc., vested in trustees.

Dividends, etc.—To have like exemptions in respect of dividends (and payments out of Her Majesty's Exchequer) as are granted to charitable institutions.

Employees shall be charged on salaries. (*Income Tax Act*, 1842, s. 149.)

CHARGE DUPLICATES—

Income Tax and Land Tax.—¹Land tax and general commissioners shall yearly cause two duplicates of the charges by every assessment to be made out by their clerk. (*Taxes Management Act*, 1880, s. 70 (1).)

¹One shall be sent to the collector of inland revenue and one to the Board. (s. 70 (2).)

Land tax duplicates shall be made for the same parishes and divisions for which distinct duplicates are directed under the Land Tax Acts.

¹ Refers also to House Duty.

CHARGE DUPLICATES—contd.

¹ Income tax duplicates shall be made for such parishes for which a separate assessment may be made. (s. 70 (3).)

¹ **Contents—**(a) The names and surnames of the several assessors and collectors for every parish and division.

(b) The full amount of sums given in charge to each collector throughout the whole year, without any discharge, diminution or defalcation. (s. (70) 4.)

Date.—¹ They shall be made out, delivered and transmitted on or before 31st March in each year, or, if assessments shall not then have been made, within one month at farthest after all appeals against such assessments shall have been heard and determined. (s. 70 (5).)

CHARITIES—

Schedule A.—Exemption shall be allowed in respect of rents or profits of lands, tenements, hereditaments or heritages vested in trustees for charitable purposes, as far as the same are applied to charitable purposes, on proof to the special commissioners. It shall be claimed by affidavit before a local commissioner and allowed by the special commissioners without vacating the assessments. (*Schedule A, No. VI. Income Tax Act, 1842, s. 61.*)

Repayment shall be certified by the special commissioners. (s. 62.)

Schedule C.—The stock of any corporation, fraternity, society or trust established for charitable purposes only, in so far as applied to charitable purposes only, shall be exempted on proof to the special commissioners. (*Schedule C, Rule III. Income Tax Act, 1842, s. 88.*)

Schedule D.—The exemption under Schedule C mentioned above is extended to “any yearly interest or other annual payment under Schedule D.”

Proof must be made to the special commissioners, who may order repayment. (*Income Tax Act, 1842, s. 105.*)

St. Andrew's Hospital, Northampton v. Shearsmith (*High Court of Justice, 1887.*)

Held that the surplus profit of a hospital for paying patients, applied to the extension of the hospital buildings,

¹ Refers also to House Duty.

CHARITIES—*contd.*

is assessable to income tax, and does not fall under the Income Tax Act, 1842, Section 105, as "interest of money, &c.," nor as being applied solely to charitable purposes. *Lord Coleridge*.—"The question is, under those circumstances when it is found that there is a profit made upon the general funds of the hospital, whether that profit is assessable to income tax. I am of opinion that it is. Two propositions have been put forward: (1) 'They are exempt, if at all, by the 105th section of the Income Tax Act, 1842' (see page 40). . . . I do not think this profit is a yearly interest or other annual payment within the meaning of the Act, but supposing it to be so, it is certainly not applied to charitable purposes only. . . . (2) 'It is expended in making the hospital itself more fit for the purposes for which the hospital is conducted.' . . . It is a fallacy to look at the purpose for which they apply the profit, and say they are not profits because when they are made they are applied to the particular purpose to which the trustees or governors choose to apply them."

See also *Duncan's Executors v. Farmer*, page 244.

What constitutes a charitable purpose ?

Commissioners for Special Purposes v. Pemsel (House of Lords, 1891).

The Moravian Church claimed exemption in respect of certain lands vested in trustees on trust to apply the profits thereof in maintaining

- (1) its missionary establishments,
- (2) a school for the children of ministers and missionaries, and
- (3) certain religious establishments.

It was held (two lords dissenting) that the profits were applied to charitable purposes in the legal sense. *Lord Macnaghten*.—"Income Tax Acts have been in force, with one long interval, ever since the close of the last century. Every Act has contained an exemption in favour of property dedicated to charitable purposes. From the

CHARITIES—*contd.*

first it was assumed that the exemption applied to all trusts known to the law of England as trusts for charitable purposes. . . . Charity in its legal sense comprises four principal divisions ; trusts for the relief of poverty, trusts for the advancement of education, trusts for the advancement of religion and trusts for other purposes beneficial to the community not falling under any of these preceding heads. . . . The Act of 1842 has nothing to do with casual almsgiving, nor with charity not protected by a trust of permanent character. The provisions of the Act are concerned with the revenues of established institutions, the income of charitable endowments. Such endowments form, according to English law, a distinct class of trusts, standing by themselves and owing their validity, if the trust is a perpetuity, to the fact that the purposes are charitable in the eye of the law."

King v. Special Commissioners (ex parte University College of N. Wales) (Court of Appeal, 1909).

The University College of North Wales, founded to provide instruction in all the branches of a liberal education, except theology, was held to be established for charitable purposes only. Exemption under Schedules A, C and D was allowed in respect of the income applied to its general purposes as well as that part appropriated to specific educational purposes.

The Judges considered themselves bound by *Special Commissioners v. Pemsel. Master of the Rolls*.—"The attempt has been made to suggest that the respondents are not within the rule of those decisions (the Pemsel case, etc.), because the education is not for the poor, but might extend to the rich, and might extend to professional or commercial education as well as to higher education. . . . There is no foundation for it (the suggestion) in authority, nor is there any foundation for it in reason."

In this connection the following comment in the case of *Linen and Woollen Drapers Institution v. Commissioners of Inland Revenue* (1887) is of interest. The institution claimed

CHARITIES—*contd.*

exemption from Corporation Duty in respect of funds built up by subscriptions of the nature indicated. *Pollock, B.*—"Here comes in the application of the well-known principle that there is a wide distinction between a mere gift by wealthy or benevolent persons to a charity or to individuals, for a purely charitable purpose, and the creation of an institution which is really in the nature of a mutual benefit society; and it cannot be doubted that if this institution were one purely of the latter kind, members alone being entitled to share in the benefits of it, and no fund being applicable except funds subscribed by the members, it would not then be a charitable institution, because, although a member, according to his poverty or misfortune, might share in the funds, it could not be said that he had subscribed for a 'charitable purpose,' where in truth he would have subscribed for the primary purpose of protecting himself or his family in periods of age, sickness, or real distress."

Hospitals, etc.—See under **Schedule A, No. VI**, page 183.

CHILDREN—RELIEF IN RESPECT OF—

Relief.—If any individual who has been assessed or charged to income tax, or has paid income tax either by deduction or otherwise, claims and proves, in the manner prescribed by the Income Tax Acts, that his total income from all sources, although exceeding £160, does not exceed £500, and that he has a child or children living and under the age of sixteen years at the commencement of the year for which the income tax is charged, he shall be entitled, in respect of every such child, to relief equal to the amount of the income tax upon £10. (*Finance (1909-10) Act 1910, s. 68 (1).*)

For 1914-15 £20 is substituted for £10. (*Finance Act, 1914 s. 7.*)

Definition.—"Child," and "children" in this provision include stepchild or stepchildren, but do not include illegitimate child or illegitimate children (except where the parents of any illegitimate child or children shall, after the birth of such child or children, have married each other). (*s. 68 (1).*)

Allowance.—*Relief* shall be given by reduction of the assessment, or repayment of the excess, or by both these means, as required. (*s. 68 (2).*)

Claims.—The provisions of the Income Tax Acts which relate to

CHILDREN—RELIEF IN RESPECT OF—*contd.*

claims for exemption, relief or abatement shall apply to claims under this section. (s. 68 (3).)

Claims by non-residents in the United Kingdom.—See under Non-residents, page 120.

CLERGYMEN OR MINISTERS—

Expenses.—In assessing duty under any schedule on a clergyman or minister of any religious denomination, a deduction may be made of any sum or sums of money paid or expenses incurred by him wholly, exclusively and necessarily in the performance of his duty or function. If such deduction is not made, repayment shall be allowed. (*Income Tax Act, 1853, s. 52.*)

Where a clergyman or minister of any religious denomination pays rent for a dwelling-house, and uses any part thereof mainly and substantially for the purposes of his duty or function as such clergyman or minister, such part of the rent of the dwelling-house, not exceeding one-eighth, as the commissioners by whom any assessment is made may allow, shall be treated as expenses to which the provisions of Income Tax Act, 1853, s. 52, apply. (*Finance Act, 1907, s. 28.*)

Lothian v. Macrae (Court of Exchequer, Scotland, 1884).

Held that voluntary contributions by a minister towards the stipend of the assistant minister may not be deducted from an assessment under Schedule E. *Lord Mure.*—
“Dr. Macrae contributes a very considerable sum towards the salary of a gentleman who is engaged as his assistant by arrangement gone into between him and the congregation of the church to which he ministers. . . . His assistant appears to have been appointed in consequence of Dr. Macrae’s age, and his not being as efficient now as he was in former years ; but it is done by voluntary arrangement. . . . (After reading from Section 52, Income Tax Act, 1853—) I do not see how these words ‘incurred by him in the performance of his duty or function’ can be held to cover any payment made to another party for the performance of that duty.”

Charlton v. Commissioners of Inland Revenue (Court of Exchequer, Scotland, 1890).

It was held that, under Section 52 of the Income Tax

CLERGYMEN OR MINISTERS—*contd.*

Act, 1842, deductions might be claimed in respect of the following expenses incurred by a minister—

- (1) the expense of visiting his congregation ;
- (2) the expense of attending meetings of mission boards and presbyterial commissions, where such attendance formed part of his duty enjoined on him by his ecclesiastical superiors ; also the expense of attending meetings of the General Assembly, etc. ;
- (3) outlay on stationery, and communion expenses ; but that no deduction should be allowed in respect of—
- (4) the portion of his dwelling-house used as an office ; (*now see the allowance granted in 1907, page 44*) ;
- (5) the expense of books.

Jardine v. Gillespie (Court of Exchequer, Scotland, 1906).

On a minister's claim to be allowed for certain expenses it was held as follows as regards the items of expenditure described. (1) On a horse and carriage, and (2) on communion elements, that the amount allowable was a question of fact on which the commissioners' determination was final. (3) On process of augmentation and (4) on pulpit supply during holidays, that the claim to allowance was inadmissible. *Lord Kinnear*.—"When a standard of *duty* is used in legal definitions it must always mean the liability for the performance which the law requires of the person affected by it. The duty of a clergyman referred to in this Statute is the personal performance of the duty required of him by the law and practice of his church, in return for the emoluments of his benefice. It is out of the question to say that the presentation of a claim for augmentation of stipend is either part of the parochial duty of the minister, or part of a duty positively enjoined upon him by his ecclesiastical superiors."

CLERK TO COMMISSIONERS—

Appointment shall be made by the general commissioners for each district, to act as clerk, and in all matters to be done by, under and before the general commissioners and the additional commissioners. (*Income Tax Act, 1842, s. 9.*)

CLERK TO COMMISSIONERS—*contd.*

Appointment shall be made at the first meeting of the general commissioners, before April 10th in England, and in Scotland before April 30th. (*Taxes Management Act*, 1880, s. 41 (1).)

Vacancies occurring during the year shall be filled by the commissioners. (s. 41 (6).)

Dismissal shall not occur during the year for which the clerk is appointed, except for a just cause, at a meeting summoned by notice on all commissioners. (s. 41 (1).)

Land Tax Clerk shall be appointed under the same rules as the income tax clerk. (s. 41 (5).)

Additional Commissioners.—Clerk shall attend all meetings of additional commissioners. (*Income Tax Act*, 1842, s. 19.)

Commissioners for Duties may elect a clerk. (s. 150.)

Assistant Clerk may be appointed, but not more than one without the approbation of the Board on a statement by the general commissioners as to the necessity thereof. (s. 9.)

No fees shall be demanded or received from any person other than the person appointed by the Board to pay allowances. (*Taxes Management Act*, 1880 s. 41 (4).)

Penalties.—See page 126.

COLLECTION—**DUTIES PAYABLE.**

First Assessments.—¹ In England income tax and land tax, and in Ireland income tax shall be payable on or before 1st January in each year, except payments made by deduction and duties on railways. (*Taxes Management Act*, 1880, s. 82 (1).)

¹ In Scotland income tax and land tax shall be payable on or before 1st January in each year, except payments made by deduction. (s. 82 (2).)

Additional Assessments.—¹ Income tax and land tax included in assessments signed and allowed on or after 1st January shall be payable on the day after that on which they have been signed or allowed. (s. 82 (3).)

¹ The duties in additional assessments which ought to have been previously collected and paid shall be collected, levied and paid by the collector. (s. 84 (1).)

¹ Refers also to House Duty.

COLLECTION—*contd.*

Duties Unpaid.—Any duties not paid shall be recoverable as a debt due to Her Majesty, with all expenses. (*Income Tax Act, 1842, s. 172.*)

DEMAND.

Demand Note.—¹ Collectors shall demand the land tax and income tax, when due, from the persons charged, or at their last abode, or at the premises charged. (*Taxes Management Act, 1880, s. 85 (1).*)

¹ **Schedules A and B.**—The demand notes for such duty shall contain a description of the property and the amount and rate of the assessment. (*s. 85 (2).*)

Receipt.—¹ Where the demand note for duties under Schedules A and B did not distinctly describe the property assessed, and the amount of the assessment and rate of duty, these particulars shall be specified in the receipt. (*Customs and Inland Revenue Act, 1881, s. 23.*)

¹ Receipts shall be given under the collector's hand on the prescribed form. (*Taxes Management Act, 1880, s. 85 (3).*)

Payment in Postage Stamps or Post Office Orders.—¹ *In Scotland or Ireland* the Treasury may make regulations for the receipt of postage stamps for payment of land tax and the duties, or any of them; such stamps shall be delivered to the Postmaster-General, and the amount thereof be paid out of the revenue of the post office to the inland revenue. (*s. 98.*)

¹ *In Scotland* a person may, within twenty-one days of having received a notice of his liability to pay land tax or the duties, produce it at any money order office, and pay there the sum payable. The postmaster shall give him a post office order payable to the Accountant-General in London for the said sum, less the commission for such order. Such person shall forthwith transmit the order to the collector in a prepaid letter, specifying particulars of the payment on the prescribed form. (*s. 99 (1).*)

¹ The collector shall credit the person named in the letter with the amount of the order, and with the commission. (*s. 99 (2).*)

¹ *In England* this provision shall be made applicable in any parish for which the collector is appointed by the Board, if the Treasury direct. (*s. 99 (3).*)

¹ Refers also to House Duty.

COLLECTION—*contd.***RECOVERY.**

Distrain.—¹ If payment is refused, the collector is required to distrain upon the messuages, lands, tenements and premises charged, or to distrain the person charged, by his goods and chattels, and all such other goods as he is hereby authorised to distrain, on the authority of the warrant delivered on appointment. (s. 86 (1).)

¹ Collector may, under a warrant obtained from the commissioners for the purpose, break open any houses or premises in the day time. Constables and peace officers shall assist the collector when required. (s. 86 (2).)

¹ A levy or warrant to break open shall be executed by, or under the direction of, and in the presence of the collector. (s. 86 (3).)

¹ Every distress shall be kept five days at the costs and charges of the person refusing to pay. (s. 86 (4).)

¹ If the duty is not then paid, the goods shall be appraised and sold by auction; any overplus received after paying costs and charges shall be restored to the owner. (s. 86 (5).)

¹ Powers of the Parish Officers Act, 1793, shall apply to levies and distrains by collectors. (s. 86 (6).)

¹ Collector advancing duties to the collector of inland revenue may, in default of payment at any time within six months after such advance, levy the land tax or income tax as he might have done before such payment. (s. 87.)

Distrain—see also under **Schedules A and B**—pages 194 and 197.

Priority of Crown.—¹ No goods or chattels, belonging to any person at the time any income tax or land tax becomes in arrear, shall (except at the landlord's suit for rent) be liable to be taken by virtue of other process, warrant or authority, unless the person seizing shall have repaid arrears, which are not to be claimed for more than one year. (s. 88 (1).)

¹ If tax is claimed for more than one year, the person seizing may pay one year's arrears, and then proceed in his seizure; in case of refusal to pay one year's arrears, the collector may distrain such goods and chattels, notwithstanding such seizure or assignment, and proceed to obtain payment of all duties assessed, with costs and charges. (s. 88 (2).)

¹ Refers also to House Duty.

COLLECTION—*contd.*

Imprisonment.—¹ Where a person refuses to pay income tax or land tax within ten clear days after demand, and no sufficient distress can be found to levy, the general commissioners may commit him to prison without bail, until the duty and costs are paid or security is given for payment. (s. 89.)

¹ By the direction of the Treasury or the Board, the general commissioners shall issue their warrant for the release of such prisoner. (s. 91.)

Liquidation.

In re Watchmakers' Alliance and Ernest Goode's Stores, Ltd. (High Court of Justice, 1905).

Held, under the Companies Winding-up Act, 1890, Section 10, that, in distributing the assets of a company without paying the income tax due, the liquidators misapplied the assets and must themselves pay the debt. A writ of attachment is issuable as a matter of right. *Buckley, J.*—"The case made is this: That the liquidators, having moneys which they ought to have disposed of in a particular way, by way of breach of trust, ignoring the rights of the person who had claims against them, paid them to the contributories when they ought to have paid them to the creditors. I think that was a misfeasance or breach of trust."

Removals.—¹ When a person removes from a parish leaving duties unpaid, the general commissioners shall certify to the general commissioners for the parish where the defaulter shall have removed or happens to reside or be, who shall raise and levy the duties on the person charged; where such parish also is in the jurisdiction of the commissioners making the assessment, they may, by certificate, direct and authorise the collector to raise and levy the duties. (*Taxes Management Act, 1880, s. 90 (1).*)

¹ This section shall extend to any removal from or to any part of Great Britain and Ireland. (s. 90 (2).)

As regards Scotland, "parish" means county or burgh, and the duties mentioned in the certificate shall be recovered under the

¹ Refers also to House Duty.

COLLECTION—*contd.*

provisions of Taxes Management Act, 1880, (s. 97)—see under Scotland, page 321. (*Revenue Act*, 1884, s. 7 (1).)

¹ Where no sufficient distress is found in the district to which the defaulter has removed, the general commissioners are required to commit the defaulter to prison by warrant. (*Taxes Management Act*, 1880, s. 90 (3).)

¹ Where any person shall reside in any other parish than that in which he has been assessed, and such assessment shall be in arrear, wholly or in part, the commissioners for the district shall certify the arrear to the commissioners for the parish of residence, who shall cause the duty to be recovered under their warrant with full costs and charges.

If no such certificate and warrant shall be issued, or the duty shall not be collected, it shall be recoverable as a debt to Her Majesty, with full costs and charges. (*Income Tax Act*, 1842, s. 177.)

PAYING OVER DUTIES COLLECTED.—¹ The Board may appoint days of receipt. (*Taxes Management Act*, 1880, s. 100 (1).)

At such receipt every collector shall account for the full amount of income tax and land tax given him in charge to collect. (s. 100 (2).)

¹ The Board may require the collector to remit weekly, or oftener, to the Exchequer in anticipation of the receipt, and may prescribe regulations as regards remittances and the mode thereof, which all collectors shall obey. (s. 100 (3).)

¹ The collectors shall pay over or account for the income tax and land tax at the receipt next after January 1st in each year. (s. 101).

¹ Proceedings at Receipts :—

- (a) Collector shall pay over the duties and receive a discharge therefor.
- (b) Collector shall deliver schedules, or within three days after.
- (c) Collector shall produce to the collector of inland revenue his duplicate showing the sums received and written off.
- (d) Collector shall answer any lawful question put by the collector of inland revenue, or by the surveyor, touching the moneys given in charge. (s. 103.)

¹ Refers also to House Duty.

COLLECTION—contd.

- (a) The collector of inland revenue may administer an oath to the collector that he has fully paid all the sums collected, and fully accounted for all sums not collected, and the collector shall answer all such questions put.
- (b) The collector of inland revenue may examine the collector on any matter touching the duties, his answers being written down, and, after opportunity of amendment, sworn to by him. (s. 104.)

COLLECTORS—

¹**Definition.**—The person or persons appointed to be collector or collectors of the land tax, the income tax and the inhabited house duties, in conformity with this Act, for a parish or group or union, electoral district or county or part of a county. (*Taxes Management Act*, 1880, s. 5.)

The enactments which follow are set out under three sub-heads, viz., **Commissioners' Collectors**, **Board's Collectors**, **All Collectors**.

¹**COMMISSIONERS' COLLECTORS (ENGLAND).**

Nomination shall be made by the general commissioners in April of one or more able and sufficient residents in the parish or group. (s. 73 (1).)

If there are no able and sufficient residents, then persons residing in a neighbouring parish or group may be nominated. (s. 73 (2).)

Office shall not be compulsory, provided that refusal shall be made within fourteen days after the notification of appointment, personally or by registered letter, to the clerk to the commissioners. (s. 73 (3).)

Appointment shall be made (on the expiration of the time limited for refusal) of such person or persons nominated as the commissioners think fit. (s. 73 (5).)

Commissioners shall nominate some other in any case of refusal. (s. 73 (7).)

Nomination or appointment shall be notified personally, or by registered letter. (s. 73 (6).)

Death of Collector.—The vacancy caused by death of a collector in any year, or before his accounts have been closed shall be

¹ Refers also to House Duty.

COLLECTORS—*contd.*

filled during the year as the appointing authority thinks fit. (s. 73 (9).)

Security to Board.—The Board may give notice to the land tax commissioners, and general commissioners, that they require any persons nominated or appointed to give security to their satisfaction, like notice being given to the persons concerned. (s. 74 (1).)

After such notice no person shall be appointed unless he has previously given such security. (s. 74 (2).)

On the failure of the person appointed to give security within the time limited by the notice, his nomination and appointment and authority as collector shall cease. (s. 74 (3).)

Security to Commissioners.—Land tax commissioners and general commissioners may require security. (s. 77 (1).)

Two or more inhabitants may give notice requiring security, after which the commissioners may not appoint any person not having given security. (s. 77 (2).)

The security to the commissioners shall be by joint and several bond, with two sureties at least, in the names of two or more commissioners, and, if required, in a sum equal to the whole of the duties. (s. 77 (3).)

¹ BOARD'S COLLECTORS.

Appointment.—The commissioners of inland revenue shall, unless the Treasury otherwise direct, appoint such collectors as are not required by law to be appointed by any other authority. (*Inland Revenue Regulation Act*, 1890, s. 4 (1).)

Appointments shall continue notwithstanding the death of a commissioner appointing. (s. 4 (2).)

Commissioners may suspend, reduce, discharge or restore any such collector. (s. 4 (3).)

General Commissioners' failure to appoint.—If the collector is not appointed on or before 31st May, the power of appointment for that and any subsequent year shall vest in the Board. (*Taxes Management Act*, 1880, s. 73 (8).)

General Commissioners' failure to fill vacancy on the death of a collector within forty days of death.—In case of such failure the appointment shall rest in the Board for that year. (s. 73 (10).)

¹ Refers also to House Duty.

COLLECTORS—*contd.*

In default of security being given when required by the Board and in the case of neglect or delay in appointing a collector who shall have given security, the Board shall appoint. (s. 75 (1).)

Powers.—Board's collectors shall have like powers and authority as commissioners' collectors. Appointments shall be made by warrant under the Board's hands. (s. 75 (2 & 3).)

Security to the Board.—The Board may require security by bond to the Crown by the collector with sureties, as the Board determine or require. (s. 76 (1).)

The conditions of the bond shall be that the collector shall demand the tax, enforce his powers against defaulters, and account for the duties to the proper officers, and other terms the Board may deem fit. (s. 76 (2).)

¹ ALL COLLECTORS.

Bonds shall be free from stamp duty. (s. 78.)

Liability of Parish.—As regards income tax and land tax the parish shall not be liable where the collector has given security to the Crown, or has been appointed by the Board. (s. 79 (1).)

It shall be liable in every other case. (s. 79 (2).)

Re-assessment shall be made as soon after the discovery of a default as can conveniently be done, and shall be charged on the assessments in force from the previous 5th April, by like rules as the original assessment. (s. 79 (3).)

Costs and duties reassessed may be recovered under general powers. (*Income Tax Act, 1842, s. 174.*)

Revocation of appointment may be made for delay or failure in demanding, receiving, recovering or paying over the duties or land tax. A new appointment may be made which may be similarly revoked. Security may be taken of all new collectors. (*Taxes Management Act, 1880, s. 117 (1) and (2).*)

Defaulting collector shall give up all books, receipts, etc., at the time appointed. (s. 117 (3).)

In default of his accounting for moneys collected, the commissioners may imprison the collector's person and seize his estate whether in his possession or in that of his heirs, assigns, etc. (s. 118 (1).)

¹ Refers also to House Duty.

COLLECTORS—*contd.*

A meeting of the commissioners shall be held after ten days' public notice. (s. 118 (2).)

The estate shall be sold at the meeting. (s. 118 (3).)

The property sold shall be transferred by the commissioners to the purchaser. (s. 118 (4).)

The sales shall be valid as in bankruptcy. (s. 118 (5).)

Examination of Collectors.—Collectors may be examined on oath by the commissioners, when they think expedient, or at the surveyor's request, and the commissioners may make any order for the sums found due. (s. 116 (1).)

Commissioners, on receiving notice of the holding of any receipt, may, and, on the surveyor's request, shall, after the examination of the collector give order to the collector of the sum to be paid over to the collector of inland revenue. (s. 116 (2).)

On clearing his accounts, the collector shall deliver to the appointing authority all duplicates of assessment for the year to which the accounts relate, with the receipt books, etc. (s. 110.)

Receipt books with counterfoils shall be provided by the Board, and the collectors shall conform to the Board's regulations as to the use of the books and counterfoils. (s. 15.)

Penalties. See page 127.

COMMISSIONERS OF LAND TAX—

Definition.—The persons appointed under authority of Parliament for executing the Acts granting a land tax, or any two of them. (*Taxes Management Act*, 1880, s. 5.)

All persons acting as Justices of the Peace for any county, shire, riding, division or district in England and Wales are declared to be commissioners. (*Land Tax Commissioners Act*, 1827, s. 1.)

Property qualification is abolished. (*Land Tax Commissioners Act*, 1906, s. 2.)

At the present time new commissioners are added by reference to a schedule of names signed by the clerk to the House of Commons.

Assessments, Meetings, etc.—See **Commissioners of Income Tax**, below.

COMMISSIONERS OF INCOME TAX—

Certificate of Office.—Commissioners shall be entitled to a Certificate of Office from the Board, revokable (on neglect) by the Treasury.

COMMISSIONERS OF INCOME TAX—contd.

Exemption is granted from parish and ward offices. (*Income Tax Act*, 1842, s. 35.)

Exemption is granted from juries. (*Taxes Management Act*, 1880, s. 40.)

Exemption is granted from service as mayor, sheriff, or in any other public office, or on jury or inquest, or in the militia. (*Inland Revenue Regulation Act*, 1890, s. 8.)

Quorum.—Any act may be done by two commissioners, or by one where it is so enacted. (*Income Tax Act*, 1842, s. 191.)

Assessments, duplicates, minute books and other public books and papers in the possession of any clerk, assessor or collector or his representatives are declared to be the property of the land tax commissioners and general commissioners, and shall remain in the custody of their clerk or other person as they direct. (*Taxes Management Act*, 1880, s. 33.)

New Commissioners may assess and levy for former years. (*Income Tax Act*, 1842, s. 18.)

Meetings.—Land tax, general and additional commissioners shall meet from time to time as prescribed by the Acts, in the most usual place of meeting within the division. (*Taxes Management Act*, 1880, s. 26 (1).)

They may also meet within an adjoining place of exclusive jurisdiction. (s. 26 (2).)

They may meet outside their division, with the consent of the Board. (*Revenue Act*, 1883, s. 12.)

General.—Governors of the Bank of England shall be commissioners for the assessing of duties on all annuities, dividends and shares of annuities, pensions, salaries, etc., paid by them. (*Income Tax Act*, 1842, s. 24.)

Directors of the East India Company shall be commissioners similarly. (s. 27.)

Commissioners for the Reduction of the National Debt shall be commissioners similarly. (s. 28.)

COMMISSIONERS, GENERAL—

Definition.—The commissioners for the general purposes of the income tax and inhabited house duties, or any two or more of them,

COMMISSIONERS, GENERAL—*contd.*

acting in or for any division under and in the execution of this Act. (*Taxes Management Act*, 1880, s. 5.)

QUALIFICATION.

England.—In counties at large, Yorkshire ridings, Lincolnshire and thirteen cities and towns,¹ the following are qualified :

The possessor of lands in Great Britain worth £200 per annum, or of personal estate worth £5,000, or £200 per annum, or of both lands and personal estate of £200 annual value, reckoning £100 personal estate as equivalent to £4 per annum, or being the eldest son of a person possessing three times this qualification. (*Income Tax Act*, 1842, s. 10.)

Monmouth, counties in Wales and all cities in England and Wales not mentioned above.—Four-fifths of the above mentioned qualification is required. (s. 11.)

Scotland.—*Shires.*—The possessor of lands in Scotland worth £150 per annum, or of personal estate worth £5,000 or £200 per annum, or of both lands and personal estate of £200 annual value, reckoning £100 personal estate as equivalent to £4 per annum, or being the eldest son of a person possessing double the qualification. (s. 12.)

Boroughs.—Three-fifths of the above mentioned qualification is required. (s. 13.)

General.—Estate need not be in the county, riding or division for which the person acts. Proof of qualification rests on the commissioner as directed by Land Tax Act, 1797. (s. 14.)

In the absence of qualified persons, it is lawful to appoint persons assessed £200 or more for profits. (s. 17.)

No qualification is required for Whitehall, St. James, and certain officers (provost, etc.) of Scotch shires. (s. 15.)

APPOINTMENT.

Land tax commissioners shall meet within each division, as convened by the Board in the *Gazettes*, and choose and set down the names of qualified persons in order, and any number from three

¹ London, Westminster, Bristol, Exeter, Kingston-upon-Hull, Newcastle-upon-Tyne, Norwich, Birmingham, Liverpool, Leeds, Manchester, King's Lynn, Great Yarmouth.

COMMISSIONERS, GENERAL—*contd.*

to seven shall be general commissioners, and a further number of three to seven shall be persons to supply vacancies.

In want of land tax commissioners, they may appoint other qualified persons residing in the district, or land tax commissioners of a neighbouring district. Names shall be sent to the Board. Where seven qualified persons are chosen no other shall interfere as commissioner. (s. 4.)

Increase of numbers from seven to fourteen in both lists may be authorised by the Board. (*Taxes Management Act*, 1880 s. 28.)

In certain cities¹ commissioners may be chosen otherwise also. (*Income Tax Act* 1842 s. 5.)

Where an insufficient number is appointed for cities, the neighbouring county commissioners may be appointed, or other persons not appointed as land tax commissioners. (s. 6.)

Vacancies (on death, declining to act or ceasing to act) shall be filled by the remaining commissioners, who shall choose from the second list, which shall again be made up to the correct number. If such list is defective so that the required number of general commissioners cannot be supplied therefrom, the general commissioners may renew the same from time to time. (s. 7.)

In default of appointment or failure to act, land tax commissioners (not exceeding seven) shall act, on notice being given to the clerk by the surveyor on the authority of the Board, and, if there is a want of land tax commissioners, the commissioners for the county shall act on notice: if these fail, special commissioners may act as general commissioners after ten days.

Where a list of commissioners willing to act is not sent to the Board, they may give the aforesaid notice to two or more persons on whom the right devolves. (s. 8.)

GENERAL.

The execution of acts shall be valid, though not in the prescribed time, except when failure to appoint a collector makes the appointment vest absolutely in the Board. (*Taxes Management*, 1880, s. 29.)

¹ London, Bristol, Exeter, Kingston-upon-Hull, Newcastle-upon-Tyne, Norwich, Birmingham, Liverpool, Leeds, Manchester, King's Lynn, Great Yarmouth,

COMMISSIONERS, GENERAL—*contd.*

In case of failure to sign assessments, etc., through an insufficient number of general commissioners acting or attending, the general commissioners in the same county may allow the assessments. (s. 30.)

Commissioners shall be assessed as other persons and shall withdraw from the consideration of any matter in which they are interested. (*Income Tax Act*, 1842, s. 135, and *Taxes Management Act*, 1880, s. 35.) See page 126 as to penalty.

Functions.—To execute this Act in all matters relating to the duties in—

Sch. A and B except allowances in No. VI, Schedule A, made by special commissioners,

Sch. D except in things directed to be done by special commissioners or additional commissioners or persons acting as such,

Sch. E except matters executed by commissioners authorised to be appointed for the duties. (*Income Tax Act*, 1842, s. 22.)

In the event of differences between landlord and tenant, etc., as to deduction of tax, etc., the general commissioners shall settle the differences and shall levy if necessary.

Their judgment shall be final. (s. 160.)

Functions of General Commissioners and of Surveyor—see *Smiles v. Northern Investment Co.*, of New Zealand, under **Schedule D, Case IV**, page 296.

Scotland.—Sheriff depute of any county or division shall be a general commissioner ex officio, without any other qualification. (*Taxes Management Act*, 1880, s. 27 (2).)

General commissioners may also be appointed by the commissioners of supply at their annual meeting. (*Customs and Inland Revenue Act*, 1893, s. 7.)

COMMISSIONERS, ADDITIONAL—

Definition.—The additional commissioners of the property and income tax or any two of them, appointed under the provisions of the *Income Tax Act*, 1842. (*Taxes Management*, 1880, s. 5.)

Instead of Appointment.—(1) The general commissioners shall appoint not more than seven persons (qualified as general commissioners) who shall choose of their number, by lot, from two

COMMISSIONERS, ADDITIONAL—*contd.*

to seven, to execute the office of additional commissioners. Those not so chosen shall execute the powers of general commissioners.

(2) Where no additional commissioners are appointed, the general commissioners shall divide themselves so that two act as additional commissioners, and, if there are not two general commissioners remaining, any of the general commissioners of an adjoining district shall act. (*Income Tax Act, 1842, s. 21.*)

In default of appointment the general commissioners shall act. (s. 16.)

Appointment.—General commissioners shall set down in writing the names of residents, being fit and proper to act as additional commissioners, the list containing as many names as is considered advisable, and which list, signed by the commissioners, shall be sufficient authority for qualified additional commissioners to act. Persons on the general commissioners vacancy list may be chosen, until their services shall be required as general commissioners. (s. 16.)

Qualification.—One-half that of general commissioners.

In the absence of qualified persons, residents assessed at £200 may be chosen. (s. 17.)

General.—Notice of Appointment shall be served on additional commissioners, signed by the general commissioners, naming the day and place for meeting.

The general commissioners shall administer the oath. (s. 19.)

A division of the additional commissioners into district committees may be made by the general commissioners, who shall allot parishes. Meetings shall be arranged so that the clerk may attend.

There shall be not more than seven in an undivided district, or on the same committee, and not less than two, which number may do any act authorised. (s. 20.)

Appointment as an additional commissioner shall not prevent action as a general commissioner, save from hearing appeals from assessments made as an additional commissioner. (s. 22.)

COMMISSIONERS FOR THE DUTIES ON OFFICES—

Appointed for Courts (whether civil, judicial or criminal, ecclesiastical or commissary) by the Lord Chancellor or the judges; for public departments and for the Counties Palatine, the Duchy of

COMMISSIONERS FOR THE DUTIES ON OFFICES—*contd.*

Cornwall, any ecclesiastical court, body or corporation, or any inferior court of justice, by the principal officers thereof (except where the Treasury determine that the commissioners for another department shall act); for the Houses of Parliament by the Speaker and the principal clerk; for other departments by the Treasury.

For each department the number of the commissioners shall be from three to seven. (*Income Tax Act, 1842, s. 30 and s. 31.*)

They shall be appointed from among the officers of the department. (s. 30.)

No other qualification is required. (s. 156.)

The appointment of commissioners shall be notified to the Board by the 5th May in each year. In default, the Board shall notify the Treasury who shall appoint commissioners within a calendar month. In default of appointment by the Treasury, the Board shall notify the commissioners for the district, on whom the execution of the Act shall devolve.

Commissioners appointed may continue to act from year to year. (s. 33.)

In cases not otherwise provided for, the paymasters and other persons appointed by the Treasury shall act as commissioners. (*Income Tax Act, 1842, s. 34.*)

Corporate City, Borough, etc.—Mayor and aldermen (from three to seven) shall act, in relation to public offices of profit in any city, corporation, etc.

County, Riding, etc., City, Town or Place.—General commissioners shall act for all offices not being under Her Majesty. (s. 32.)

Where there is an insufficient number in any department, the Treasury shall direct commissioners for other departments to act. (*Income Tax Act, 1853, s. 26.*)

Appointments shall be notified to the Board.

In default of appointment, the general commissioners for the district may act for public departments. (s. 26.)

Commissioners shall take the oath required, and shall appoint a clerk and assessors and collectors where necessary. (*Income Tax Act, 1842, s. 150.*)

Offices in Ireland.—The special commissioners shall act. (*Income Tax Act, 1853, s. 26.*)

CORPORATIONS, COMPANIES AND SOCIETIES—

Chargeable to Duties.—All bodies politic, corporate or collegiate, companies, fraternities, fellowships or societies of persons, corporate or not corporate, shall be chargeable with like duties as any person, and the officers acting as treasurer, auditor or receiver shall do all acts requisite for the assessing and paying of the duties. (*Income Tax Act, 1842, s. 40.*)

Returns.—Officers shall prepare statements of profits, without deduction for any dividends. (A proportionate deduction in respect of duty shall be allowed by the persons entitled to dividends.)

Salaries, etc., of officers chargeable shall not be included in the statement. (s. 54.)

Employees.—Officers shall be similarly responsible for acts necessary to assessing employees. (*Customs and Inland Revenue Act, 1879, s. 18.*)

See also under **Returns**, page 146.

Secretary.—The duties imposed on officers (by the three sections cited above) shall, in the case of any company, be performed by the secretary of the company, or other officer (by whatever name called) performing the duties of secretary. (*Finance Act, 1907, s. 22 (2).*) Corporations and Societies may not claim exemption, see page 3.

Municipal Undertakings.—See pages 167 to 176.

CROWN—

Schedule C.—Stock belonging to Her Majesty is exempted. (*Income Tax Act, 1842, s. 88. Sch. C, No. V.*)

Schedule A.—Duty on any house, etc., belonging to Her Majesty in the occupation of any officer of Her Majesty, in right of office or otherwise, (except apartments in Her Majesty's Royal Palaces), shall be charged on and paid by the occupier. (s. 60. *Sch. A, No. IV, 8.*)

Coomber v. Justices of Berkshire (House of Lords, 1883).

Held that buildings erected and used as an Assize Court and a Police Station are occupied for the use and service of the Crown and are exempt by privilege. *Lord Blackburn*.—" (Referring to the words of Schedule A, No. IV, rule 8, page 179.)—" As the tax is imposed upon the salary of such officers, it was most reasonable to provide

CROWN—*contd.*

that, where the salary was partly paid by a rent-free house, the officer should pay tax on that house. I should infer that those who framed the Act thought that, unless expressly named, such occupation would have been exempted. . . . I do not think it can be disputed that the administration of justice, both criminal and civil, and the preservation of order and prevention of crime by means of what is now called police, are among the most important functions of Government, nor that by the constitution of this country these functions do, of common right, belong to the Crown. . . . (As regards assize courts and police stations—) Both are maintained for the purposes of the administration of those purposes of the Government which are according to the theory of the constitution administered by the Sovereign.” *Lord Bramwell*.—“If this property was leasehold the owner of the rent paid for it would be liable to income tax.”

The above case overruled *Clerk v. Commissioners of Supply for Dumfries* (1880) where the contrary had been held.

Adam v. Maughan (1889).

Held that a Burgh Court, but not municipal offices, may be exempted from income tax by Crown privilege. Municipal offices, or corporation baths and slaughter-houses cannot be exempted on the ground that they yield no profit and can be used for public purposes only. *Lord President*.—“A Burgh Court is part of the Queen’s Establishment for the administration of justice, and cannot be subjected to taxation, unless it was specially mentioned in the Act of Parliament as being liable. . . . The remainder of the buildings seem to be occupied for the ordinary purposes of municipal administration, and we have no ground of exemption of buildings of that kind. . . . The question raised about the baths need hardly be mentioned even, because it is perfectly plain that the revenue derived from that is subject to taxation. As regards the revenue derived from the markets and slaughter-houses, it appears to me that although possibly the

CROWN—*contd.*

appellant may have some case for claiming a deduction from the profits in respect of a portion of the salaries at some of the general municipal offices of the town, they have not made out any case here which can enable us to give them any relief." *Lord McLaren*.—"The Weights and Measures Office is just a part of the local administration."

Bray v. Justices of Lancashire (Court of Appeal, 1889).

Held that the apartments occupied by the medical officers and steward of a County Lunatic Asylum situate in and forming part of the asylum buildings are chargeable with income tax. *Fry, L. J.*—"The only real point is:—Was this property in the occupation of the Crown or the persons using it exclusively in and for the service of the Crown?"—Answered in the negative.

Brown (Surveyor of Taxes) v. J. Smith (Court of Exchequer, Scotland, 1901).

Held that premises which are occupied for municipal purposes, and only occasionally used as a court of justice, are liable to assessment under Schedule A.

DEPRECIATION—

General commissioners, or special commissioners shall, in assessing the profits or gains of any trade, manufacture, adventure, or concern in the nature of trade chargeable under Schedule D, or the profits of any concern chargeable by reference to the rules of that schedule (see page 177), allow such deduction as they think just and reasonable as representing the diminished value by reason of wear and tear, during the year, of any machinery or plant used for the purpose of the concern, belonging to the person by whom the concern is carried on. Where machinery is let to the person by whom the concern is carried on, on terms that he shall maintain it and deliver it in good condition at the end of the lease, he is deemed to be the owner.

Where the lessor has the burden of maintaining and restoring any machinery or plant, he may claim repayment of such tax deducted from the rent as represents the tax on the diminished value during the year. No claim shall be allowed unless made within

DEPRECIATION—*contd.*

twelve months after the expiration of the year of assessment. (*Customs and Inland Revenue Act, 1878, s. 12.*)

Claims in respect of deductions for wear and tear shall be included in the annual statement of profits, and the additional commissioners shall make allowance as they think just and reasonable. (*Finance Act, 1907, s. 26 (1).*)

No deduction or repayment shall be allowed in any year if the deduction, when added to the deductions allowed in previous years to the person by whom the concern is carried on, will make the aggregate exceed the total cost to that person of the machinery or plant, including any capital expenditure on the machinery or plant by way of renewal, improvement or reinstatement. (s. 26 (2).)

Where full effect cannot be given to the deduction in any year, owing to there being no profits or gains chargeable with income tax in that year, or owing to the profits or gains so chargeable being less than the deduction, the deduction, or part, to which effect has not been given, shall be added to the amount of the deduction for the following year, and so on for succeeding years. (s. 26 (3).)

In this section "deduction for wear and tear" means the deduction allowed under the Customs and Inland Revenue Act, 1878, s. 12. (s. 26 (4).)

Caledonian Railway Co. v. Banks (Court of Exchequer, Scotland, 1880).

Held that no allowance can be claimed under the Customs and Inland Revenue Act, 1878, s. 12, where the sums allowed for repairs and renewals are considered by the commissioners to cover the loss by reason of wear and tear, or in the case of new plant not yet needing repair. *Clerk, L. J.*—"The commissioners were entitled to hold that the value of the additional plant in question was not diminished by wear and tear during the five years in question. . . . If the commissioners assumed that the expression 'diminished value' in section 12 signifies value for the purpose for which it was intended in a going concern, I cannot say they were wrong in so holding. I do not think that the words had any reference to the value

DEPRECIATION—*contd.*

of the plant as merchantable or marketable articles, because its capacity to earn income constitutes its sole value to the railway company, and is the only quality contemplated under the statutes relating to the taxation of income."

Lord Gifford.—"Instead of the commissioners guessing at probable deterioration, by taking percentages or round sums, which is necessarily a rough mode at getting at the result, they have taken the company's own plan of calculation, namely, taking the actual sums expended in repairing and renewing the plant, and this although the renewed part was better and more expensive than that which was worn out. . . . The company cannot get an allowance for deterioration twice over, first by deducting the actual expenses of repair and renewal and then by deducting an additional estimated sum for the same thing. Nor will it do, as the Railway Company urge, to make a distinction between old and new plant, and deal with old plant one way, and new plant another. The same principle must be applied to both."

Burnley Steamship Co. v. Aikin (Court of Exchequer, Scotland, 1894).

Held that allowances under the Customs and Inland Revenue Act, 1878, s. 12, may not include any loss in earning power caused by ships becoming obsolete, or take into account any diminution in market value not caused by wear and tear. *Lord McLaren*.—"I think 'wear and tear' means nothing more than the physical depreciation of the subject apart from its being rendered less useful by the discovery of better machinery." *Lord President*.—"The words 'diminution of value through wear and tear' plainly point to the physical deterioration going on in the subject which is being considered and to bring it under these words, the fact that relatively the ship is now of less value because during the year other people have built better ships seems to me to strain the language in a way which is entirely unwarranted."

DEPRECIATION—*contd.*

Leith, Hull and Hamburg Steam Packet Co. v. Bain (Court of Exchequer, Scotland, 1897).

Held that the company's appeal on the ground of the insufficiency of the rate of the allowance made by the commissioners ($5\frac{1}{2}$ % instead of 7 % as claimed) must fail. *Lord President*.—"I am far from saying that it is the duty of this Court to accept an estimate of diminished value through wear and tear which can be shown either to have been made without rhyme or reason or to have proceeded upon some demonstrably erroneous method of estimation. But here it is necessary that the appellants should be able to put their finger on the difference (between $5\frac{1}{2}$ % and 7 %) which makes the one right and the other wrong."

Leith, Hull and Hamburg Steam Packet Co. v. Musgrave (Court of Exchequer, Scotland, 1899).

Held that no deduction may be made from the sum representing the wear and tear of a fleet, on account of the interest which that sum would produce if invested during the lives of the ships concerned. *Lord Trayner*.—"It appears to me to be altogether inadmissible for the Commissioners to allow less than the proper deduction because a use may be made of the sum actually allowed which may (as it may not) result in producing the sum which should originally have been allowed." *As to cases stated by the Commissioners generally*.—"It is only consistent with their public duty that they should, if asked to do so, disclose fully and fairly the grounds on which they had proceeded, as it is, or may be, only on such disclosure that the legality of their determination can be ascertained."

Cunard Steamship Co. v. Coulson (High Court of Justice, 1899).

The commissioners based their allowance for depreciation on the wear and tear occurring during the year of assessment. The company claimed an allowance based on the wear and tear of the three preceding years. It was held that the basis adopted by the commissioners was not

DEPRECIATION—*contd.*

incorrect. *Kennedy, J.*—"The commissioners have made that estimate in a particular way, but I cannot see that that estimate is unjust or unreasonable. I do not say they are bound to make it in that particular way. The Legislature has left a good deal of margin to consider the particular kind of business dealt with."

British India Steam Navigation Co. v. Leslie (High Court of Justice, 1900).

The company alleged that the commissioners had made their allowance on an incorrect basis. The commissioners denied having made their calculation on the basis alleged. It was held that no point of law was involved and that the appeal must fail.

Peninsular and Oriental Steam Navigation Co. v. Leslie (Court of Appeal, 1900).

The company objected to the commissioners' allowance on the grounds—

- (1) That an allowance on the written down value is wrong.
- (2) That the life of the vessels to be taken is their average length of service in the company's employ and not their total length of life.
- (3) That in calculating the annual allowance, interest thereon should be ignored. (As a matter of fact the commissioners had not taken such interest into account.)

Held that no point of law was involved. *Wright, J.*—"All that we have to see is that the commissioners have not disregarded any term of the enactment or any necessary element in the calculation."

John Hall, Junior and Co. v. Rickman (High Court of Justice, 1905).

The commissioners made allowances year by year in respect of the depreciation of certain ships, but when the aggregate allowances amounted to 96 per cent. of the

DEPRECIATION—*contd.*

total cost of the ships they refused to make further allowances, on the ground that the ship had a breaking-up value of at least 4 per cent. It was held that the commissioners were not right in refusing to make the allowance. *Walton, J.*—"The case might be different if there were any evidence of an agreement between the appellants and the commissioners that the allowance for depreciation should be calculated upon the basis of its being an allowance which would at the end of a period of years, taking into account the breaking-up value of the vessels, fully replace the appellant's capital, and that after that date no further allowances should be made. But no such agreement is relied on."

London County Council v. Edwards (High Court of Justice, 1909).

The council reconstructed a horse tramway for electric traction. By agreement between the Crown and the council, it had been the practice to allow from the profits the cost in each year of renewing worn-out parts. At the time of the reconstruction there was a part worn out, and it was agreed that an allowance should be made, in respect thereof, of an amount equivalent to the cost of relaying horse lines. The council claimed, however, that a further allowance should be made, in respect of the lines not worn out, of the proportion of the cost of renewals equivalent to the proportion of the life of the lines which had been exhausted.

It was held that no question of law was involved, but that, having accepted the practice, the council were not entitled to depart from it when it proved disadvantageous to them. Their application to have the case reheard on a different principle was refused.

As to the wear and tear of new plant:—

Channel, J.—"I do not quite agree with the view put forward, that a new thing cannot be depreciated in value by wear and tear, and that as long as the thing in question is fit to do its work and does not require replacing there is

DEPRECIATION—*contd.*

no diminution in value by wear and tear. It seems to me that the value of a thing depends to a certain extent not only upon its present use, but upon the period which it is likely to last ; and that a rail which is fit to use now, and to use for two years more, is not so valuable as a rail which is quite new and will be fit to use for twenty years. The difference is a diminution caused by wear and tear, and a diminution of value by wear and tear within the meaning of this enactment. It is a fallacy to say because this plant is all new and because nobody would think of doing anything to it at the end of one year only, that it is not diminished in value at all."

Scottish Shire Line, Ltd. v. Lethem (Court of Session, Scotland, 1912).

A limited liability company succeeded to a shipping business carried on by a former company. At the time of sale the latter company had a balance of depreciation allowance to be made whenever the profits of future years were large enough to permit it (see *Finance Act, 1907, s. 26 (3)*, page 64). As the new company was regarded as succeeding to the business it was assessed on the average profits thereof, irrespective of the change in ownership. It was held that the allowance of the balance did not attach only to the old company and must in such circumstances be made to the new company when their profits permitted. *Lord Dundas*.—"The language of the subsection (3) is conceived in broad and general terms, and does not (I must assume intentionally) strike any personal note. The references in subsection 2 to the "person" seem important, rather by way of contrast than as supporting the Crown's contention. Again, subsection 4, while it takes one back to Section 12 of the 1878 Act, does not repeat, but omits, the words of personal limitation with which that section concludes. The Crown has treated the Appellant Company as the old Company by taking that Company's profits during the preceding years as the basis for assessing the Appellants' profits for 1910. It

DEPRECIATION—*contd.*

would be anomalous if we were to permit the Crown to treat the Appellants as a new and different concern when it comes to the matter of the wear and tear deduction."

Lord Guthrie.—"The question would be entirely different if the parties had been at issue on the question of the Appellant Company's identity with or succession to the old Company."

Depreciation of Capital.—See under **Schedule D**, *Case I*, *Rule 3*, page 257.

DOUBLE ASSESSMENT—

Where any person charged is, by error and mistake, assessed again for the same cause, on the same account, for the same year, he may apply to the general commissioners for the district where he is assessed by error, who may, on due proof (by certificate of the commissioners rightly assessing, or other lawful evidence on oath) cause such assessment, or such part thereof as is doubly assessed, to be vacated.

Where paid, the commissioners of inland revenue may, on proof to them, direct repayment. (*Income Tax Act*, 1842, s. 171.)

¹ Where it appears to the Board that a person has been assessed more than once to duties for the same cause and for the same year, they shall direct the whole, or such part of one or more assessments as appears to be an overcharge, to be vacated, and thereupon the same shall be by such order vacated accordingly. (*Taxes Management Act*, 1880, s. 60.)

See dicta in *Holborn Viaduct Land Co. v. Regina*, 1887, page 28.

EARNED INCOME—**YEARS 1907-8 TO 1913-14 INCLUSIVE.**

Incomes not exceeding £2,000.—Any individual who claims and proves, in the manner provided by this section, that his total income from all sources does not exceed £2,000, and that any part of that is earned income, shall be entitled to such relief from income tax as will reduce the amount payable on the earned income, as if tax were charged on that income at the rate of ninepence. (*Finance Act*, 1907, s. 19 (1).)

¹ Refers also to House Duty.

EARNED INCOME—*contd.***YEARS 1909-10 TO 1913-14 INCLUSIVE.**

Incomes not exceeding £3,000.—Section 19, Finance Act, 1907, shall apply to any individual who claims and proves, in the manner provided by that section, that his total income from all sources exceeds £2,000, and does not exceed £3,000, as if one shilling were substituted for ninepence. (For 1909-10 the date of claim was July 31st, 1910.) (*Finance (1909-10) Act*, 1910, s. 67.)

AFTER 1913-14.

The following subsection shall be substituted for subsection 1 of the *Finance Act*, 1907, s. 19—

Any individual who claims and proves in the manner provided by the *Finance Act*, 1907, s. 19, that his total income from all sources does not exceed £2,500, and that any part of that income is earned income, shall be entitled, subject to the provisions of that section, to such relief from income tax as will reduce the amount payable on the earned income to the amount which would be payable if the tax were charged on that income at the rate of—

9d. if the total income does not exceed £1,000 ;

10½d. if the total income exceeds £1,000 but does not exceed £1,500 ;

1s. if the total income exceeds £1,500 but does not exceed £2,000 ;

1s. 2d. if the total income exceeds £2,000 but does not exceed £2,500.

(*Finance Act*, 1914, s. 4 (1).)

The *Finance (1909-10) Act*, 1910, s. 67 is repealed. (s. 4 (2).)

ALL YEARS.

Relief.—This relief shall be in addition to any other relief under the Tax Acts, except that where an individual is entitled to relief in respect of an abatement under Section 8, Finance Act, 1898, or of Insurance premiums paid (or in respect of Children—*Finance (1909-10) Act*, 1910, s. 68), the relief under this section shall be given only in respect of such earned income (if any) as remains after deducting therefrom the amount on which he is so relieved. (*Finance Act*, 1907, s. 19 (2).)

EARNED INCOME—*contd.*

Where the relief mentioned in s. 19 (2) is given by way of repayment the amount repaid shall be adjusted so that the total relief given does not exceed that which would have been given if the whole were claimed simultaneously. (s. 19 (3).)

Charges.—An individual shall not be entitled to relief under this section in respect of any income, the tax on which he is entitled to charge against any other person, or to deduct, retain or satisfy out of any payment he is liable to make. (s. 19 (5).)

Claims.—An individual who desires relief under this section, must, in cases where he is required to make a return for the purpose of assessment, claim that relief at the time the return is made, and must claim in any case before the thirtieth day of September in the year for which the tax is charged. (s. 19 (4).)

Subject to the provisions of this section, all the provisions of the Income Tax Acts which relate to claims for exemption, relief or abatement shall apply to claims under this section, and the proof to be given with respect to those claims. (s. 19 (6).)

Definition.—For the purposes of this section “income” means income as estimated according to the directions of the Income Tax Acts, and “earned income” means—

- (a) any income arising in respect of any remuneration from any office or employment of profit, or in respect of any pension, superannuation, or other allowance, deferred pay, or compensation for loss of office given in respect of the past services of the individual, or of the husband or parent of the individual, in any office or employment of profit, whether the individual or husband or parent shall have contributed thereto or not ; and
- (b) any income from any property which is attached to or forms part of the emoluments of any office or employment of profit held by the individual ; and
- (c) any income charged under Schedule B or D, or the rules of Schedule D, which is immediately derived by the individual from the carrying on or exercise by him of his profession, trade or vocation either as an individual, or, in the case of partnership, as a partner personally acting therein. (s. 19 (7).)

In cases where a wife's profits are deemed to be the profits of the

EARNED INCOME—*contd.*

husband, any reference in this provision to the individual includes either the husband or the wife. (s. 19 (7).)

Partners.—Where an individual carrying on or exercising any profession, trade or vocation in partnership with any other person makes any claim to relief, the income of the individual from the partnership for the year to which the claim relates may be treated separately for the purpose of such relief, and, if so treated, shall be deemed to be the share to which he is entitled during the said year in the partnership profits, such profits being estimated according to the Income Tax Acts. (s. 20.)

Non-residents in the United Kingdom.—See page 120.

EXEMPTION.

See under **Abatement and Exemption.**

FOREIGN MINISTER—

Schedule A.—Duty in respect of any house or tenement occupied by any accredited minister from any foreign Prince or State, shall be charged on and paid by the landlord, or person immediately entitled to the rent. (*Income Tax Act, 1842, s. 60. Schedule A, No. IV, 7.*)

Schedule C.—The stock or dividends of any accredited minister of any foreign State, resident in the United Kingdom, shall be exempt. (If in the name of a trustee, the property thereof shall be proved by him before the special commissioners.) (s. 88.)

¹ FORMS—

Prescribed by Act.—The forms in the 2nd Schedule to this Act, or forms to the like effect varied as circumstances require, may be used, and shall be sufficient in law. (*Taxes Management Act, 1880, s. 15 (1).*)

The forms referred to are headed as follows—

1. Assessors' Certificate of Assessments.
2. Commissioners' Certificate of First Assessments.
3. Assessors' Certificate of Re-assessment.
4. Commissioners' Certificate of Re-assessment. (Schedule D.)
5. Collectors' Duplicate of Assessments and Collectors' Warrant.

¹ Refers also to House Duty.

FORMS—*contd.*

6. Appointment of Assessors for making Re-assessment of Income Tax.
7. Collectors' Warrant, which may be issued during the period the Schedules of Defaulters remain with the Commissioners.
8. Certificate of Removal.
9. Warrant to break open.
10. Warrant of Commitment.
11. Revocation of Collector's Appointment.
12. Warrant to imprison person and seize estate of defaulting Collector.
- 13 Warrants to sell Collector's Estate.
14. Notice of seizure of Collector's Estate.
15. (Charge.) Duplicate of the Income Tax and Inhabited House Duties.
16. Commissioners' Schedule of Defaulters.
17. Schedule of Sums discharged from Assessments returned in the Duplicates of charge.
18. Land Tax Assessment.
19. (Charge.) Duplicate of the Land Tax.
20. Certificate of Land Tax. Excess.
21. Certificate to the High Court of the Names of Collectors who have made default in accounting for the Duties and Land Tax. (*Taxes Management Act, 1880. Schedule 2.*) . . .

Prescribed by Board.—Every assessment, duplicate, charge, bond, warrant, notice of assessment or of demand or other document required to be used in the assessing, charging, levying or collecting of the duties and the land tax, shall be made out as prescribed, supplied or approved by the Board, and shall be valid and effectual without stating the case or facts in any more particular manner than is required in and by such forms. (*Taxes Management Act, 1880, s. 15 (2).*)

Any schedule, etc., required to be on parchment by any Act may, if the Board direct, be on paper or other material. (s. 15 (4).)

Errors.—No assessment, charge, warrant or other proceeding shall be quashed or deemed to be void or voidable for want of form, or be affected by any mistake, defect or omission ; provided that the person or property charged, or intended to be charged or affected, be designated therein to common intent and understanding,

FORMS—*contd.*

and such proceeding be in substance and effect in conformity with or according to the intent and meaning of the said Acts. (s. 15 (5).)

Delivery of forms, etc.—(a) All notices and forms may be in writing or print or partly in each.

(b) All notices required to be affixed or served may be delivered by the surveyors to the respective assessors.

(c) Such delivery shall be as effective as if by the commissioners.

(d) Assessors are required to observe the surveyor's directions touching the time and manner of fixing, delivering or otherwise serving such notices, and the persons on whom they are to be served, such directions being previously seen and allowed by the commissioners.

(e) Forms required to be served on any person may be delivered to such person, or left at his usual or last known place of abode. See *Berry v. Farrow*, page 25, and *Attorney-General v. McLean*, page 15.

(f) A notice that is to be given by a surveyor may be served and sent by prepaid registered letter, and in proving such service it shall be sufficient to prove that the letter was properly addressed, registered, prepaid and posted.

(g) Notice required to be given by the Board may be signed by one of their secretaries or assistant secretaries.

(h) All notices required to be delivered to or served on land tax commissioners, general commissioners and additional commissioners may be delivered to or served on their clerk. (s. 16.)

FRIENDLY SOCIETIES—

A FRIENDLY SOCIETY LEGALLY ESTABLISHED under any Act of Parliament relating to Friendly Societies, provided that it appears by the deposited rules of the Society that the sums assured to any individual or to any person claiming under him shall not exceed £200, and the amount of any annuity or annuities granted to any person shall not exceed £30 per annum, shall be exempted, as follows, under Schedules A, C and D.

Schedule A.—Exempted in respect of the exemptions mentioned in Schedule A. No. VI (see page 183). (*Revenue Act*, 1889, s. 12.)

FRIENDLY SOCIETIES—contd.

Schedule C.—Exempted in respect of stock, dividends or interest (on proof by trustee or treasurer as to investments in public securities in the Bank of England). (*Income Tax Act, 1842, s. 88. Schedule C, No. I.*)

Schedule D.—Exempted in respect of all interest and profits and gains chargeable under Schedule D. (*Income Tax Act, 1853, s. 49.*)

Extension.—The exemptions allowed (as stated above) shall extend to any registered friendly society if it is restricted by Act of Parliament, or by its rules, from assuring to any person any sum exceeding £300 by way of gross sum, or £52 a year by way of annuity. (*Finance (1909-10) Act, 1910, s. 70.*)

AN UNREGISTERED FRIENDLY SOCIETY whose income does not exceed £160 is entitled to exemption. (*Finance Act, 1904, s. 8.*)

HIGH COURT CASES—

Immediately upon the determination of any appeal under the Income Tax and Inhabited House Duty Acts, by general commissioners or special commissioners, the appellant or surveyor (if dissatisfied with the determination as being erroneous in point of law) may declare his dissatisfaction, and having so done may, within twenty-one days after the determination, require the commissioners (by written notice to their clerk) to sign and state a case for the opinion of the High Court thereon.

The case shall set forth the facts and determination, and the party demanding it shall transmit it to the High Court within seven days of receiving it (and previously, or at the same time, shall give written notice, and a copy of the case to the other party). (*Taxes Management Act, 1880, s. 59 (1).*)

- (a) The party shall, before being entitled to have the case stated, pay twenty shillings to the clerk to the commissioners for the case.
- (b) The High Court shall hear and determine the question of law, and thereupon reverse, affirm or amend the determination, or remit the matters to the commissioners with its opinion, or make such order as to costs as is thought fit.
- (c) The High Court may send the case back for amendment, and deliver judgment after amendment,

HIGH COURT CASES—*contd.*

(d) The High Court authority shall and may be exercised by a Judge of the High Court subject to the rules and orders. (s. 59 (2).)

Appeals shall be from the decision of the High Court to Her Majesty's Court of Appeal, and thence to the House of Lords. (s. 59 (3).)

The fact that a case is pending shall not delay payment of duty. If too much is paid the excess is to be repaid with interest, if any, as allowed by the High Court ; if too little is paid the balance shall be treated as arrears. (s. 59 (4).)

All matters within the jurisdiction of the High Court under this Act shall be assigned—

- (1) In England and Ireland, subject to the Acts regulating the High Court, to the Exchequer Division of Her Majesty's High Court.
- (2) In Scotland to the Court of Session sitting as a Court of Exchequer. (*Taxes Management Act*, 1880, s. 10.)

Costs.

Lord Mayor, Aldermen and Citizens of Manchester v. James Sugden (Surveyor of Taxes) (Court of Appeal, 1903).

As to necessary expenses incurred in preparing and settling a draft case (stated by the general commissioners) for signature by the commissioners on an appeal to the High Court, it was held that the expenses so incurred by the successful party on the appeal may properly be allowed, on taxation, to that party. *Stirling, L.J.*—
 "I only desire to say that in my view it does not follow from this decision that in every case those costs—the costs of perusing the proposed case—will be allowed to either party. It will be a matter for the Taxing Master to consider in each case, and to form a determination as to whether or no they are necessary and proper for the attainment of justice."

Claim under the Customs and Inland Revenue Act, 1890, s. 23.

Bruce v. Burton (High Court of Justice, 1901).

On an application for repayment under the Customs and

HIGH COURT CASES—*contd.*

Inland Revenue Act, 1890, s. 23, refused by the commissioners, it was held in the High Court that the commissioners had no power to state a case, the application not being an appeal against an assessment.

Rex v. City of London Income Tax Commissioners (Court of Appeal, 1904).

It was held that the loss referred to in the Customs and Inland Revenue Act, 1890, s. 23, is a general loss resulting from the whole of the business concerned. If the local commissioners consider a wrong question, in determining an application under that section, their decision can be dealt with by a writ of *certiorari*, but not if they consider the right question even if they determine wrongly thereon in point of fact or of law. *Lord Alverstone*.—"I think the commissioners have three things to consider. In the first place, to ascertain the aggregate amount of the man's income; then they have to say: Has he sustained a loss from one of those undertakings or vocations carried on by him referred to in the earlier part of the section; and, if so, what is the proper adjustment of his liability to pay income tax by reference to that loss?"

Case to disclose full grounds of decision.—See *Leith, Hull, etc., Co. v. Musgrave*, page 66.

Questions of law and of fact.—See cases on pages 219, 220, 225, and 228.

HUSBAND AND WIFE—

A Married Woman acting as sole trader, or having separate property or profits, shall be charged as if actually sole and unmarried, except that the profits of a married woman living with her husband shall be deemed to be his profits, and shall be charged in his name. A married woman living in Great Britain, separate from her husband (whether her husband is temporarily absent from Great Britain or otherwise), shall be charged as feme sole on any allowance or remittance from property out of Great Britain if entitled thereto in her own right, and as the agent of her husband if received from or through him or from his property or on his credit. (*Income Tax Act, 1842, s. 45.*) Now see *Finance Act, 1914, s. 9, page 79.*

HUSBAND AND WIFE—contd.

See *Bowers v. Harding*, page 317.

Purdie v. The King (*High Court of Justice*, 1914).

A married woman living with her husband suffered the deduction of tax from her dividends and claimed repayment of such tax from the Crown on the ground that as a married woman she could not herself be charged. It was held that her claim could not succeed, inasmuch as no charge was made. Taxation by deduction is not to be regarded as equivalent to charging tax upon the person suffering such deduction.

Separate Claims.—Where the total joint income of a husband and wife charged to income tax by way of assessment or deduction does not exceed £500, and upon a claim for exemption, relief, or abatement the general commissioners are satisfied that such total income includes the profits of the wife from any business carried on or exercised by means of her own personal labour, and that the rest of the income, or any part thereof, arises from the profits of a business carried on or exercised by means of the husband's own personal labour, and unconnected with the business of the wife, they shall deal with such claim as if it were a claim in respect of the said profits of the wife, and a separate claim on the part of the husband in respect of the rest of the total income; but they shall deal with any income of the husband arising or accruing from the business of his wife, or from any source connected therewith, as if it were part of the income of the wife. (*Finance Act*, 1897, s. 5 (1).)

“Business” means any profession, trade, employment, or vocation, or any office or employment of profit, and “profits of business” includes profits, etc., arising therefrom and chargeable under Schedule D or E. (s. 5 (2).)

Application for Individual Treatment.—If an application is made for the purpose in such manner and form as may be prescribed by the Commissioners of Inland Revenue, either by a husband or wife, within six months before the sixth day of May in any income tax year—

- (a) Income tax (including super-tax) for that year shall be assessed, charged, and recovered on the income of the husband and on the income of the wife as if they were not married, and all the provisions of the Income Tax Acts with

HUSBAND AND WIFE—contd.

- respect to the assessment, charge, and recovery of income tax (including super-tax), and the penalties for failure to make a return, shall apply as if they were not married ; and
- (b) All the provisions of the Income Tax Acts which relate to claims for exemption, relief, or abatement, and the proof to be given with respect to those claims, shall also apply as if they were not married ; and a claim under Section 5 of the *Finance Act, 1897*, (which relates to the exemption of the income of a married woman in certain cases, see page 79), may be made by the wife as well as by the husband ; and
 - (c) The income of the husband and wife shall be treated as one in estimating the amount to be repaid or allowed in respect of any exemption, relief, or abatement which depends wholly or partially on total income, (except so far as is otherwise required for the purpose of dealing with any claim for exemption, relief, or abatement under Section 5 of the *Finance Act, 1897*), and the total amount of any exemption, relief, or abatement given in respect of the incomes of the husband and wife shall not exceed that which would have been given if an application had not been made under this section ; and
 - (d) The benefit of any such exemption, relief, or abatement may be given either by way of reduction of assessment, or by repayment of any excess of tax which has been paid, or by both of these means, as the case requires, and shall, in the case of relief given in respect of earned income (including any exemption, relief, or abatement given in respect of the profits of a wife from a business in pursuance of Section 5 of the *Finance Act, 1897*), be given in proportion to the income earned respectively by the husband and the wife, in the case of relief given in respect of insurance premiums, be given to the husband or wife, as the case may be, by whom the premium is paid, and in any other case be given in proportion to the respective incomes of the husband and wife ; and
 - (e) for the purpose of any exemption, relief, or abatement, a return may be made by the husband or the wife of the total income of the husband and wife, but if the Commissioners of

HUSBAND AND WIFE—*contd.*

Inland Revenue are not satisfied with such return they may obtain a return from the wife or husband, as the case may be; and

- (f) the income of the husband and wife shall be treated as one in estimating total income for the purpose of super-tax, and the amount of super-tax payable in respect of the total income shall be divided between the husband and wife in proportion to their respective incomes, and the total amount payable shall not be less than it would have been if an application had not been made under this section. (*Finance Act, 1914, s. 9 (1).*)

See page 326 as to liability to Super-tax.

The Commissioners of Inland Revenue may require returns for the purposes of this section to be made at any time, and Section 55 of the *Income Tax Act, 1842*, (see page 130), shall, with the necessary modifications, apply in the case of the refusal or neglect to make or wilful delay in making any such return. (s. 9 (2).)

Distrain.

Where income tax (including super-tax) is charged on the profits or income of a married woman, in pursuance of this section, the power to distrain in the case of non-payment of any income tax payable by the wife shall extend to the goods and chattels of the husband as well as to the goods and chattels of the wife:

Provided that no distrain shall be made on the goods and chattels of the husband unless a written demand for payment shall first have been made on the husband and he shall have failed to pay the amount of tax payable by his wife within seven days of such demand. (s. 9 (3).)

See page 48 for general provisions authorising distrain.

INDUSTRIAL AND PROVIDENT SOCIETIES—

Schedules C and D.—A registered society shall not be chargeable under Schedules C and D, unless it sells to persons not members thereof, and the number of the shares of the society is limited either by its rules or its practice.

Employees.—No member or person employed by the society shall be exempt from any assessment to which he would be otherwise liable. (*Industrial and Provident Societies Act, 1893, s. 24.*)

¹INSUPERS—

In case of failure

- (a) to assess or charge duties or land tax in any parish,
- (b) to return duplicates of assessments (income tax or land tax) for any parish,
- (c) to raise sums charged on any person,

the Board may set insuper all sums so in arrear and return such failure to the High Court by certificate delivered to the Queen's Remembrancer. (*Taxes Management Act*, 1880, s. 112 (1).)

Return shall specify—

- 1. Parish or division.
- 2. Cause of failure as far as is known to the Board.
- 3. Names of any two or more land tax commissioners and general commissioners for the division.
- 4. Names of assessors and collectors, and persons charged with duties and making failure where assessment is made. (s. 112 (2).)

Commissioners, assessors, collectors and persons charged shall be liable to process for such failure. (s. 112 (3).)

Every parish returned insuper for sums not accounted for to the commissioners of inland revenue and contained in the duplicate, shall be liable to reassessment for such sums except where the parish is relieved by a special enactment. (s. 112 (4).)

Queen's Remembrancer shall enrol. (s. 112 (5).)

Process shall be issued out of the High Court on application by the Board. (s. 112 (6).)

INTEREST, ANNUITIES, AND ANNUAL PAYMENTS—

The enactments and cases relating to this subject are set out under the following sub-heads—The Assessment of Interest; Annuities and Annual Payments; The Deduction of Tax from Payments of Interest; General.

THE ASSESSMENT OF INTEREST.

Charging Section.—Schedule D.—The duties shall be made payable for and in respect of all interest of money, annuities, and other annual profits and gains not charged by virtue of any other Schedule. (*Income Tax Act*, 1853, s. 2.)

¹ Refers also to House Duty.

INTEREST, ETC. (HOW ASSESSED)—*contd.*

Schedule D. Case III. The profits on all discounts, and on all interest of money not being annual interest, payable or paid by any person whatever, to be computed at a sum not less than the full amount arising within the preceding year. (*Income Tax Act, 1842, s. 100.*)

Schedule D. Case IV. Interest arising from Foreign or Colonial securities, on the amount received in the United Kingdom in the current year, without any deduction or abatement. (*Income Tax Act, 1842, s. 100.*)

Yearly Interest.—Duty shall be charged on all annuities, yearly interest of money or other annual payment (whether payable within or out of the United Kingdom, whether as a charge on property or a personal debt or obligation, and whether received and payable half-yearly or at shorter or more distant periods).

Where paid out of profits or gains brought into charge, duty shall not be charged on the recipient but on the person liable to such annual payment, who may deduct tax in making such payment.

Where paid without deduction (being charged on colonial or foreign property or security or otherwise) or where paid from profits or gains not charged, duty shall be charged under Case III, Schedule D. (*Income Tax Act, 1842, s. 102.*)

Not annual.—Where not reserved or payable by the period of one year, duty thereon shall be charged under Case III. Schedule D. (*Income Tax Act, 1842, s. 102.*) See also the *Customs and Inland Revenue Act, 1888, s. 23*, as to Interest not being annual and not paid out of profits charged.

What constitutes "yearly" or "annual" interest? See pages 94, etc.

Interest on Exchequer Bills due and payable in June shall be assessed to the day of payment in June at the respective rates in force while accruing. (*Income Tax Act, 1854, s. 3.*)

Interest sometimes Assessed under Case I, Schedule D, as part of Trade Profits.

Smiles v. Australasian Mortgage and Agency Co., Ltd. (Court of Exchequer, Scotland, 1888).

In the course of a wool-broking business, the company grants temporary advances on the security of second

INTEREST, ETC. (ASSESSED CASE I)—*contd.*

mortgages, or on wool and produce, the advances fluctuating in amount as the produce is realised. Held that, as the company is primarily a trading concern, the interest is chargeable under Case I, Schedule D, and not under Case IV.

Lord President.—"The trade in which they are engaged is partly the trade of a broker and partly the trade of a banker. The account between the Company and its customers is just of the nature of a current account as between banker and customer. . . . The advances are not at all in the nature of investments of money, but on the contrary, advances of the most irregular and fluctuating description, just such advances as a commission agent makes upon the security of the goods in his hands, or that a banker makes according to the state of the securities which he holds for the time." *Lord Shand.*—"If this had been the case of a banking company carrying on the business of a bank here, with a branch in one of the colonies, and thus receiving abroad interests and discounts as profits of their business in the ordinary way in which banking business is transacted, that would not be a case which would fall under the fourth case, which appears to me to be the case applying to investments. If such a banking company or insurance company made investments of their realised funds in stocks in the colonies which were paying them interest periodically, that would, so far as these investments were concerned, be a very different matter."

Norwich Union Fire Insurance Co. v. Magee (*High Court of Justice*, 1896).

An English Fire Insurance Co. has certain American securities, the interest from which is left in America and reinvested there to build up the reserve required by the laws of the United States. It is included in the English accounts of the company as profit.

Held: (1) That the interest forms part of the profits of the company assessable under Case I, Schedule D.

(2) That it is in effect remitted to this country.

INTEREST, ETC. (ASSESSED CASE I)—*contd.*

Wright J.—" (1) If there is a trade which cannot be carried on without making investments abroad, the interest arising on the investments necessarily made for the purposes of trade is part of the gains of that trade. In the present case I think it clearly appears that the Company could not carry on, or could not so profitably carry on, its business in America unless, as the business increased, they provided continually augmenting reserves in these American securities. They do not invest it in those securities for the sake of investment or for the sake of making profit by those investments, but for the sake of having a fund invested in America to answer the requirements of the American law. (Assessable Case I.) (2) (The Interest) is received in this country because this money would have to be sent out from here if it were not otherwise provided, and if it can be otherwise provided it is a mere matter of convenience which does not alter the nature of the moneys for the purpose of investment."

Liverpool and London and Globe Insurance Co. v. Bennett.

Brice v. Northern Assurance Co. Brice v. Ocean Accident Guarantee Corporation. (House of Lords, 1913.)

An insurance company had three classes of investments abroad, (a) investments necessarily made to comply with the law of the country concerned, (b) investments made in order that the company might legally effect insurance of a certain amount, and (c) investments made voluntarily in each country in order to put the moneys of the company to a profitable use. It was held that the income accruing from investments of all three classes should be regarded as part of the profits or gains of the company's business, and should, therefore, be included in the assessment on the company under Case I of Schedule D. *Lord Shaw.*—"In this particular case the most elementary considerations go to show the unity of the concern and the combination of interest with the other elements of profit or loss in making up the sum of the

INTEREST, ETC. (ASSESSED CASE III)—*contd.*

year's gains. It may not be conclusive that the company's books, kept upon these sound principles, show that the interest was so treated, namely, as part of the annual profits, but the balance sheets are at least of some use as showing what, as a matter of fact, is the true and proper way of dealing with these receipts." *Earl Loreburn*.—"The Crown cannot be compelled to proceed under Case IV or V if it prefers to proceed under Case I."

As to Crown's option where Cases I and IV both apply, see page 296.

Untaxed Interest to be taken into account in assessing Insurance Companies.—See *Scottish Union and National Insurance Co. v. Smiles* under Schedule D—page 249.

Interest Assessable under Case III, Schedule D, as a separate subject of charge.

Clerical, Medical and General Life Assurance Society v. Carter (Court of Appeal, 1889).

A Life Insurance Company receiving untaxed interest on a portion of its investments is liable to return that interest for assessment, notwithstanding that the tax deducted from the interest of its other investments may have exceeded the profits of the company. *Esher, M.R.*—"It is said on behalf of defendants that this interest is not an assessable subject matter, because it is interest which comes to defendants in the course of trade and business. . . . I think that all interest, where it can be, is taxable. . . . Section 52 must be read so that hardship cannot arise and that the people are not to be taxed on such interest as this, first of all as a subject matter of itself, and then, by bringing it into the proceeds of the gains and profits of trade, tax it again." *Fry, L.J.*—"Schedule D of the Act of 1853 creates a charge in respect of all interest of money. The £165 in question is interest of money, and, therefore, *primâ facie* it is chargeable."

London County Council v. Grove (Court of Appeal, 1896).

The London County Council advanced money to the London School Board and other local bodies, and received

INTEREST, ETC. (ASSESSED CASE III)—*contd.*

interest without tax being deducted. The loans were advanced out of the Council's Consolidated Stock, on which they paid interest to the holders, less an amount deducted therefrom (by the Bank of England) in respect of income tax which was handed over to the revenue.

Held that the interest received by the Council is assessable under Schedule D, notwithstanding this other payment of tax. *Lopes, L. J.*—"I think that in this case there is really only one question raised, and that is this: Whether the County Council are liable to pay income tax in respect of interest that they have received from persons to whom they have lent money, which has not already been subject to income tax. I am clearly of opinion that they are liable."

The Court declined to give any decision as to whether the County Council were entitled to retain for their own use, or to receive repayment of a part of the tax deducted by the Bank of England. This matter has been dealt with in subsequent cases, however. (See pages 99 and 101.)

Leeds Permanent Benefit Building Society v. Mallandaine
(*Court of Appeal*, 1897).

A Building Society makes advances on the security of the borrower's property and in respect of one or more shares which he takes in the Society. On each share he pays 2s. 6d. a week in repayment of the advance with interest. The Society refuses to allow deduction of income tax by the borrowers in respect of the interest included in the payment. Held that the Society is assessable on the interest received, whether annual or not. *Esher, M. R.*—"We have nothing to do with Schedule A at all, and this money is not money lent in respect of land, it is money lent to the people, and when it is once lent this Society never looks how it is spent or what sort of a house is built with it, or whether a house at all is built with it. . . . By way of collateral security, not interfering with the contract at all (*i.e.*, the contract as to the amount and method of repayment), no part of the contract,

INTEREST, ETC. (ASSESSED CASE III)—*contd.*

a wholly different contract—these people mortgage their premises. It has nothing to do with the other contract, (which) is a pure simple contract of money lent and interest to be paid upon it.” *A. S. Smith, L.J.*—“It is proved that this interest, without any deductions for income tax, has been paid to this Society; they have refused to allow deductions; they have received money which is charged with this tax and they are the persons who are bound to pay it.” *Rigby, L.J.*—“Whether it be annual interest within the meaning of these Acts may be a difficult question, but whether it is or not, I should hold that it is a chargeable subject matter and that the Society are chargeable in respect of it” (*i.e.*, because they had received it in full).

As to what constitutes annual interest: Wills, J.—“This is not yearly interest. I put nothing, of course, on the fact that this is payable monthly, because it is quite clear from many passages in the Act that this is not the test at all, but it is interest which is inextricably mixed up with other matters. . . . With the varying amount of interest payable every month it can hardly be called reasonably ‘yearly’ interest, which as a general rule means 5 per cent. or 10 per cent. or whatever the percentage may be upon an ascertained and ascertainable sum. . . . I cannot think that that can be meant by the Act of Parliament by ‘yearly’ interest, which points to something which a person can ascertain for himself every year and know exactly what deduction to make.”

Comment on this Case by the Lord Ordinary in Lord Advocate v. City of Edinburgh: “It has been decided that interest on money lent for less than a year is chargeable with income tax in the hands of the recipient of such interest. That is the result of the case *Leeds Permanent Benefit Building Society v. Mallandaine*.”

Revell v. Edinburgh Life Insurance Company (Court of Exchequer, Scotland, 1906).

A Life Insurance Company is in receipt of taxed income

INTEREST, ETC. (ASSESSED CASE III)—*contd.*

which exceeds its net profits. Held that other interest received without the deduction of tax is assessable to income tax under Cases III and IV. Schedule D. *Lord Kinnear*.—"The only question now is whether the interest hitherto untaxed is taxable or not. I am clearly of opinion that it is."

As to claim under Customs and Inland Revenue Act, 1890, s. 23, Lord President said :—"The company made a claim under the Act of 1890, and in the profit and loss account they entirely omitted the interest from the investments at home on which they paid tax. The Crown not unnaturally replied: 'These are as much part of your income as anything else, and if you are going to show where you made a profit or loss in the sense of the 1890 Act, you must show a loss on an ordinary commercial balance sheet taking all the receipts on the one side and all the payments out on the other.' " *Lord McLaren* pointed out that the Court was not asked to determine the question, but he expressed the opinion that "a good deal might be said" against the view held by the Lord President as shown above, in a case where the Revenue had elected to assess a company under Case III and not under Case I. The practice indicated by the *Lord President* remains undisturbed, however. The enactment in question is set out on page 30, with other cases on the subject.

Quarter Sessions of Glamorgan v. Wilson (High Court of Justice, 1910).

It was held that the Quarter Sessions (acting as the Compensation Authority under the Licensing Act, 1904) should be assessed in respect of interest allowed by its bankers on the balance of the Compensation Fund; the assessment should not be made on the Treasurer. It was also held that the *Customs and Inland Revenue Act, 1888, s. 24* (see p. 99), does not relieve from assessment persons receiving interest without the deduction of tax authorised thereby.

INTEREST, ETC. (ASSESSED CASE III)—contd.

Matthews v. Cork County Council (High Court of Justice, Ireland, 1910).

It was held that the Council should be assessed in its own name in respect of interest on its County Fund banked in the name of the County Treasurer. *Palles, C.B.*—"The objection is that this 'interest' is an accretion to the rates leviable by the County Council, and that as those rates are not assessable to income tax, neither is the interest thereon. . . . But the moment the Council lends out these moneys at interest, the result is to produce a new subject of taxation. . . . It may be that the County Treasurer, as the custodian of the Fund, is liable for the tax; but the casting of such liability cannot relieve from assessment the body which receives and benefits by the payment of the interest."

Application Immaterial.

Blake v. Imperial Brazilian Railway (Court of Appeal, 1884).

A company constructing a railway in Brazil received a government guarantee of 7 %, part of which it used in paying interest on the debentures at 5½ %, and the balance in forming a sinking fund to pay off the debentures. The whole guarantee of 7 % was held to be liable as interest. *Brett, M.R.*—"It was contended on the part of the Company that the assessment should be reduced by the sum which had been applied to the sinking fund. . . . They say, assuming that it had not been applied to the sinking fund we admit we should have had to pay income tax upon it, and we say we are not to pay tax upon it because it has been applied to the sinking fund." (The contention was rejected.)

Nizam's Guaranteed State Railway v. Wyatt (High Court of Justice, 1890).

A company constructing a railway in Hyderabad received a guarantee from the Nizam's government for twenty years of 5 % on its capital, part of which it used in

INTEREST, ETC. (ASSESSED CASE III)—*contd.*

paying interest on the capital and the balance in forming a sinking fund for the redemption of the debentures. The whole guarantee was held to be chargeable as an annuity. *Pollock, B.*—"The mere use of the word *annuity* cannot be taken as governing and deciding this question; we must see what, in substance, that sum which was paid annually is." (As regards the obligation to appropriate a portion of the annuity as stated—) "The question is not as to what this money is ultimately applied to, but at the time it is paid over by the Nizam to the Railway Company is it 'an annuity'—is it a profit in the shape of an annuity of which the Company get the benefit, although they do not pay it away immediately for the purposes of constructing the line or paying dividends? To my mind it is as much a profit to them and as much an annuity to them whether they apply it in one way or the other." *Hawkins, J.*—"I cannot look at it in any other way than as an income which has to be applied and appropriated in the interest of the company."

Secured on Rates.—Interest secured on rates shall be charged on the officer managing the accounts, who shall be responsible for doing all acts necessary to assessment. (Tax may be deducted from such interest at the rate in force at the time of payment.) (*Income Tax Act, 1842, s. 102.*)

Aberdeen Commissioners of Supply v. Russell (Court of Exchequer, Scotland, 1890).

Held that interest paid on money borrowed on the security of the rates is chargeable with income tax under the concluding provision of Section 102, Income Tax Act, 1842, notwithstanding the fact that the money borrowed was used in the erection of certain municipal buildings charged to income tax under Schedule A. *Lord President.*—"The leading purpose of the 102nd section is that all yearly interest of money not chargeable otherwise is to be charged in the terms set out in that section, and there is a proviso at the end of the section which specially applies to the case in hand."

INTEREST, ETC. (ANNUITIES)—*contd.*

See also *Lord Advocate v. City of Edinburgh* (1903) and (1905), pages 101 and 96.

ANNUITIES.

Charging Section.—See page 82. Annuities and annual payments fall within the same rules as yearly or annual interest.

See dicta in *Coltness Iron Co. v. Black*, page 258, as to the principle on which annuities are charged.

What constitutes an annuity ?

See *Secretary of State for India v. Scoble*, page 201.

Foley v. Fletcher and another (Court of Exchequer, 1858).

An estate was sold for £46,000 which the purchaser agreed to pay by instalments. It was held that such instalments did not constitute an annuity within s. 102 of the Income Tax Act, 1842. *Pollock, C. B.*—"It appears to me that Section 102—when it makes the tax payable upon all annuities, yearly interest of money, or other annual payment *ejusdem generis*, whether such payments (that is to say, payments *ejusdem generis*) are charged on any property of the person paying the same by virtue of any deed or will, or otherwise, or as a reservation, or as a personal debt or obligation by virtue of any contract—must be read as excluding payments by virtue of any contract to repay a debt . . . If the plaintiff had sold this estate for an annuity for a certain period, and so called it, it would have been liable to be charged with income tax. She has not done so ; she has sold it for a sum of money ; she has stipulated that it shall be paid by certain instalments. Those instalments are the payment of the debt, not the payment of an annuity, or annual payment *ejusdem generis*."

Chadwick v. Pearl Life Insurance Company (High Court of Justice, 1905).

The owner of a lease received a gross rental of £1,925, from which he paid a ground rent of £300. He sold his interest for £1,000, the purchaser contracting to pay the

INTEREST, ETC. (ANNUITIES)—*contd.*

ground rent and to pay the vendor the sum of £1,625 per annum in quarterly instalments until the lease terminated. It was held that the payment of £1,625 constituted an annuity from which tax should be deducted under s. 40, Income Tax Act, 1853.

Walton, J.—"If there is a sum of money owing by a debtor to his creditor, and it is agreed between them that the debt shall be paid by annual instalments, it is admitted that the annual instalments are not annual payments within the meaning of s. 40; further than this, it appears from *Foley v. Fletcher* (see page 92) and *Secretary of State in Council of India v. Scoble* (see page 201), that where the debt and the obligation to pay the instalments are created by the same instrument the same rule applies, and the instalments are not annual payments within s. 40. It is obvious that there will be cases in which it will be very difficult to distinguish between an agreement to pay a debt by instalments, and an agreement for good consideration to make certain annual payments for a fixed number of years. In the one case there is an agreement for good consideration to pay a fixed gross amount, and to pay it by instalments; in the other there is an agreement for good consideration not to pay any fixed gross amount, but to make a certain, or it may be uncertain, number of annual payments. The distinction is a fine one and seems to depend on whether the agreement between the parties involves an obligation to pay a fixed gross sum. In the present case . . . I asked the plaintiff's counsel what was the gross amount payable, but received no satisfactory answer to the question. It is plain to me that no estimate of any gross amount was involved in the contract between the parties."

Annuities from Charitable Funds.—See *Duncan's Executors v. Farmer*, page 244.

Company dealing in Annuities.—See *Gresham Life Assurance Society v. Styles*, page 250.

INTEREST, ETC. (DEDUCTION OF TAX)—*contd.* DEDUCTION OF TAX FROM PAYMENTS.

Yearly Interest.—Every person liable to the payment of any rent or any yearly interest of money or other annual payment, either as a charge on any property or as a personal debt or obligation by virtue of any contract (whether received or payable half-yearly or at any shorter or more distant periods), shall be entitled, and is hereby authorised, to deduct duty therefrom. (*Income Tax Act*, 1853, s. 40.)

(At the rate, or proportionate amount of several rates chargeable by law in respect of such rent, etc., or the source thereof during the period through which the same was accruing due. *Revenue Act*, 1864, s. 15.) See also s. 102, *Income Tax Act*, 1842, page 83.

What is Yearly Interest or other Annual Payment ?

Bebb v. Bunny (Court of Exchequer, 1854).

A person contracted for the purchase of real estate, agreeing to pay interest on the purchase money at 5 per cent. per annum over any period which should elapse between the date fixed for completion and the day on which the purchase money was actually paid. It was held that, as the interest was in fact paid over a period longer than a year, it should be regarded as “annual” or “yearly” interest and tax should be deducted therefrom. *Wood, V.C.*—“The whole difficulty is in the expression ‘yearly’ interest of money; but I think it is susceptible of this view, that it is interest reserved, at a given rate per cent. per annum; or, at least in the construction of this Act, I must hold that any interest which may be or become payable *de anno in annum*, though accruing *de diem in diem*, is within the 40th section (*Income Tax Act*, 1853).”

Mosse v. Salt (Court of Chancery, 1863).

It was held that if bankers take a mortgage security from a customer for a fixed sum owing by the customer, the relation of banker and customer ceases and becomes one of mortgagor and mortgagee. Income Tax may be deducted from interest paid by the mortgagor. *Master of the Rolls.*—“It is very true that, in dealings between

INTEREST, ETC. (DEDUCTION OF TAX)—*contd.*

merchants, the discounting of bills and the like, and loans made for short periods, the income tax is not deducted. But it is equally clear that . . . the mortgagor is entitled to deduct from the interest paid to the mortgagee the income tax which he necessarily has paid."

Goslings & Sharpe v. Blake (Court of Appeal, 1889).

It was held that interest received by a banker on loans for periods of less than a year is not yearly interest within the meaning of s. 40, Income Tax Act, 1853. Income Tax may not be deducted in paying such interest. *Esher, M.R.*—If it be a lending of money for a specified time less than a year, then it is said that those who lend the money charge interest upon it in the contract in several different forms. They may say, 'I will lend you £1,000 for three months, you to pay me back at the end of that three months £1,000 and £30 more for the use of it.' It is admitted that this is not annual interest. They may say, 'I will lend you £1,000 for three months, to be paid back at the end of that three months, and on the same day *you are to pay me interest on that sum at the rate of 12 per cent. per annum.*' . . . In other words, the mode of expression 'at the rate of 12 per cent. per annum for the three months' is the mercantile mode of expressing 'you shall pay it to me at the end of three months, £1,000, and also £30 for interest.' There is another case: 'You shall pay me on that day £1,000, *with interest at the rate of 5 per cent.*' That is another mercantile phrase which is a short phrase, but which everybody who understands business knows to mean and to be equivalent to '*at 5 per cent. per annum.*' They have left out '*per annum,*' and it is the same as if they put it in, and it is precisely like the second case, so is the third case precisely like the first. Therefore the whole thing depends on this. The money and the payment for the use of the money, sometimes called interest, is both to be paid on the specific day and that day terminates a period less than a year. If that be so, it is impossible to say that that sum of money is fixed

INTEREST, ETC. (DEDUCTION OF TAX)—*contd.*

by reference to being paid at the end of the year. It has nothing to do with a year. *It is calculated upon and fixed by the fact that money is to be lent for three months, and not with reference to anything with regard to a year at all, except in the form of language, which is a mercantile form of language and equivalent to what I have stated.* Therefore, in such a case as that, I am of opinion that the case is not within the 40th section of the Act of 1853." *Bowen, L. J.*—"We are dealing in this case only with short loans, that is to say with loans made for a period short of one year, loans which are not intended to be continued, and are not continued, for a long period. It seems to me it is not yearly interest at all; it is not calculated with reference to a year in any sense, although it is true that it is expressed in a notation which is borrowed from the language of cases where there are yearly loans, or where the interest is calculated by the year. It is convenient to express in that notation the amount of interest that has to be paid but *it is not calculated on a year nor on the supposition that the loans would last for a year, therefore it is not yearly interest when the loan does not last beyond the short period, and the interest does not run over it.*"

Delage and another v. Nugget Polish Co., Ltd. (High Court of Justice, 1905).

The plaintiffs, who were resident abroad, sold to the defendant company certain rights in a secret process, upon the terms that they should receive a fixed percentage of the gross receipts from the sale of the boot polish manufactured. It was held that the amount paid was an 'annual payment' paid out of the profits of the company within s. 40 of the Income Tax Act, 1853, and that income tax should be deducted therefrom. *Phillimore, J.*—"The defendants were compelled by the Crown to pay income tax on their net profits, without deducting the sum of money which they have to pay to the plaintiffs as eight per cent. of the gross takings. They were rightly so compelled because this money was as between the Crown

INTEREST, ETC. (DEDUCTION OF TAX)—*contd.*

and the taxpayer to be regarded, not as a deduction from profits, but as part payment in the way of capital expenditure for the secret process originally bought out of which they made their profit." After stating that the payment was an annual payment from which tax should be deducted (either under s. 102 of the Act of 1842 and s. 40 of the Act of 1853, or under s. 24 of the Customs and Inland Revenue Act, 1888) the judge pointed out that it was in fact paid out of the company's profits and gains, and that s. 102 was therefore applicable. "It did not make any difference that the plaintiffs were foreigners. They could not be directly taxed, but they were receiving a sum of money which they only received because work had been done in this country."

In re Craven's Mortgage ; Davies v. Craven (High Court of Justice, 1907).

The principal sum advanced on a mortgage was made repayable upon the death of a certain person, with simple interest at 5 per cent. per annum from a certain date to the day of the death in question. It was held that the case was governed by *Bebb v. Bunny* (see page 94) and that tax should be deducted from the interest.

Poole Corporation v. Bournemouth Corporation (High Court of Justice, 1910).

The Poole Corporation purchased a tramway undertaking and raised the purchase money by means of a loan repayable by sixty half-yearly payments of principal and interest. It then leased the undertaking to the Bournemouth Corporation in consideration of a rent sufficient to pay the instalments referred to. It was contended that, as the Poole Corporation had power to deduct tax from the interest only and not from the principal included in the instalments, the Bournemouth Corporation should in turn only deduct tax from a proportionate part of the rent. It was held that tax should be deducted from the whole rent. *Neville, J.*—"When parties contract to

INTEREST, ETC. (DEDUCTION OF TAX)—*contd.*

pay rent to be ascertained by certain payments to be made by the lessors, nothing being said about income tax at all, it is quite impossible for me to hold that that means such a payment to be made, as, after calculation of income tax, should provide the lessor with an indemnity fund. It means that it is to be a way of ascertaining the rent, and that means the actual figures making up the actual sum to be paid by the lessors, from which by virtue of Act of Parliament the deductions must be made."

In re R. Cooper (Court of Appeal, 1911).

Under a bankruptcy notice a debtor paid a judgment debt with seven days interest at 4 per cent. per annum. It was held that such interest was not "annual" within the meaning of the income tax acts. *Cozens-Hardy, M.R.*—"In the present case I ask myself, is it possible to suppose that this was a transaction in which anybody contemplated or intended anything permanent? It is quite impossible so to regard it."

See also dictum on page 264.

Interest not wholly paid out of Profits charged.—Upon payment of any interest of money or annuities charged under Schedule D, and not payable, or not wholly payable, out of profits or gains brought into charge to such tax, the person by whom or through whom they are paid shall deduct thereout the rate of income tax in force at the time of such payment; and shall forthwith render an account to the commissioners of inland revenue of the duty so deducted or of the amount deducted out of so much of the interest, etc., as is not paid out of profits or gains brought into charge. Such amount shall be a debt from such person to Her Majesty, recoverable as such accordingly. (*Customs and Inland Revenue, 1888, s. 24 (3).*)

Lord Advocate v. Magistrates of Edinburgh (Court of Session, 1905).

It was held that the municipal authorities must account to the Revenue for the tax which they should have deducted from (under the Customs and Inland Revenue

INTEREST, ETC. (DEDUCTION OF TAX)—*contd.*

Act, 1888, s. 24) interest paid by them, notwithstanding that they failed to make such deduction. *Lord President.*—"I consider this a very preposterous contention. It really comes to this, that the corporation of Edinburgh, by not having done what the statute clearly tells them to do, viz., deduct the income tax payable in respect of interest, have escaped a debt which otherwise would have been due by them to the Crown. . . . The debt is the sum, the retention of which is put as a duty along with the liability to render an account. But the idea that by not doing it they can get rid of a debt, is a thing which seems to me preposterous."

City of London Contract Corporation v. Styles (Court of Appeal, 1887).

During the construction of works the company paid, without deduction of tax, certain interest to shareholders of other companies. It was held that they must pay tax on this interest. (For remainder of case see under **Schedule D. Inadmissible deductions**, page 266.) *Esher, M.R.*—"They must pay to the commissioners that income tax which they ought to have deducted from the persons to whom they pay the money."

Lord Advocate v. Forth Bridge Railway Co. (Court of Exchequer, Scotland, 1890).

A railway company paid interest on its share and debenture capital during the construction of its works, no profits being made at the time. It contended that its liability to income tax on this interest should be based on the interest paid in the year preceding the year of assessment, it being a railway company. It was held that they must pay over the actual tax deducted. *Lord Wellwood.*—"It is not necessary for the Crown to assess for such claims; they are debts due to the Crown and recoverable as such."

Attorney-General v. London County Council (House of Lords, 1900).

The council received rents on their property (charged

INTEREST, ETC. (DEDUCTION OF TAX)—*contd.*

under Schedule A), and interest (charged under Schedule D), which were paid into a consolidated fund along with certain capital sums and certain sums raised out of the rates. Further, they *paid* interest on their Consolidated Stock which was charged on the whole of their lands, rents and property. They claimed that they should deduct tax from the whole of the interest so paid, but need account to the revenue only for the difference between this tax, and that suffered by them under Schedules A and D on the rents and interest received as stated above. It was held (1) that the income tax suffered under Schedule A as well as under Schedule D should be set against the tax deducted from interest paid, and (2) that such interest should be regarded as being paid out of the taxed income, and not partly out of this, and partly out of the capital sums and rates also included in the consolidated fund.

(1) *Lord Macnaghten*.—"The difficulty which has given rise to the present claim on the part of the Crown is created by the use of the words 'profits or gains brought into charge to such tax' in the earlier part of the subsection (23 (3)), and the words 'profits or gains brought into charge' in the latter part. What is the meaning of 'such tax'? And what is the meaning of 'brought into charge'? . . . Income tax is a tax on income. It is one tax, not a collection of taxes essentially distinct. There is no difference in kind between the duties of income tax assessed under Schedule D and those assessed under Schedule A or any other Schedule." *Lord Davey*.—"I construe the words 'profits or gains brought into charge' as including all annual income charged with the tax under any of the schedules, and not as confined to profits charged under Schedule D. The contention (for the Crown) is that, as interest on their Consolidated Stock is charged on the whole of the lands, rents, and property belonging to the Council, and on their rates, such interest ought, for the benefit of the Crown, to be apportioned rateably over all the subjects of the charge, and only a rateable proportion deemed to be paid out of their income from rent or

INTEREST, ETC. (DEDUCTION OF TAX)—*contd.*

from interest received by them. There is no authority for this. It is enough if the interest is charged upon and is payable out of the taxable income, though there may be other subjects of charge."

Lord Advocate v. City of Edinburgh (Court of Exchequer, Scotland, 1903).

A corporation paid interest on temporary loans, secured on the rates and on its property. It was held that, so far as this interest was not paid out of profits already brought into charge, income tax must be retained thereon and accounted for to the revenue. *Lord Ordinary*.—"Section 24 (3) Revenue Act, 1888, does not speak merely of the 'yearly interest of money' but of 'any interest of money.' That is what distinguishes the present case from *Goslings v. Sharpe*, which was a decision on the Income Tax Act of 1853, s. 40, the only question being whether interest calculated at a yearly rate, though for periods less than a year, could come within the description of 'yearly interest.' " The Court held not.

Attorney-General v. London County Council (House of Lords, 1907).

The Council deduct income tax on payment of interest on loans partly secured on property owned and occupied by them. The Council claimed that a portion of this interest should be regarded as being paid out of profits brought into charge (*i.e.*, under Schedule A). It was held that interest may only be regarded as being paid out of taxed sources from which it is in fact paid, and not out of unproductive property. *Lord Chancellor*.—"This sum represents interest paid by the County Council to the holders of Consolidated Stock, which is *not* paid out of profits or gains brought into charge. It is paid out of rates. And on the rates which the Council pays over to its creditors it is bound by Section 102 of the Act of 1842 to deduct the tax and pay it over to the Crown. It is said that the effect of this conclusion will be to tax the same income twice over. I cannot see this. The County

INTEREST, ETC. (DEDUCTION OF TAX)—*cont.*

Council pays tax on £118,000 annual value of their own land which they occupy. The holders of Consolidated Stock pay tax on £118,000 annual interest of the debt due to them from the County Council. It seems to me that the two incomes are different, and the persons who pay income tax on these two incomes respectively are also different." *Lord Macnaghten*.—"It is quite true that this property is charged in favour of the holders of Metropolitan Stock, but the charge is not and can never be operative. It is superseded by the charge on the rates. . . . The property has never contributed, and, so long as the Council use it for their statutory purposes, never will contribute towards the payments of interest on Metropolitan Stock."

Sugden v. Leeds Corporation (House of Lords, 1913).

In its double capacity as a municipal corporation and an urban sanitary authority, the Leeds Corporation had two funds, a City fund and a Consolidated (Sanitary) fund. The taxed income of the City fund exceeded by £63,109 the interest paid on loans on undertakings in connection therewith. The taxed income of the Consolidated fund was £78,519 less than the interest paid on loans on undertakings in connection therewith. All loans were charged in the first instance against the particular undertaking concerned and the fund with which such undertaking was connected. By a private Act of 1901, also, all loans were charged ultimately and in a general way on the whole revenue and assets of the Corporation, but the exact effect of the provision was disputed.

The Corporation contended that the excess of interest on the Consolidated fund should be regarded as paid out of the excess of taxed income on the City fund (*i.e.*, all but £15,410 of the £78,519 referred to should be regarded as paid out of the £63,109). If this view obtained, the Corporation would be entitled to retain all the tax deducted from the interest except tax on £15,410.

INTEREST, ETC. (DEDUCTION OF TAX)—*contd.*

It was held, however, that the excess of interest on the Consolidated fund should not be regarded as paid out of the excess of taxed income of the City fund. None of the £78,519 was paid from taxed sources and the whole of the tax deducted therefrom must be handed over to the Crown. *Lord Chancellor*.—"If the annual payments would properly have been payable out of profits, but the person bound to make them has chosen to defray them out of some other source of income, this does not affect his right to retain the amount of tax he has deducted. On the other hand, it is not enough to entitle him to retain it that he has a merely contingent or ineffective right to pay out of the profits. His right must be of a kind that actually enables payment to be properly made out of the profits, and does not leave them practically unaffected because of the existence of some other source of income primarily and effectively applicable in discharge of the burden. In each case the question is whether the annual payments taxed are actually and properly payable out of the profits. . . . Under the legislation prior to 1901, no such step as to vary a specific security or to substitute for it a different one, however good, appears to have been contemplated. The intention to take it under the Act of 1901 is not an intention which one would lightly presume in the absence of clear language. But I do not think it necessary to express an opinion as to whether the existing securities were kept alive as primary securities with a new and general but merely secondary charge added, or whether the language used is so clear that the inference of an intention to substitute a new security for an old one *in invitum* as regards the lender, is too strong to be resisted. The crucial question seems to me to be a narrower one, and to arise in a different form. It is whether, even if the old securities are abrogated and a new security substituted so as to provide for the case of a deficiency should liquidation in some form be necessary, the original statutory directions for the application of rents and profits are left standing and operative in the meantime, so that the

INTEREST, ETC. (DEDUCTION OF TAX)—*contd.*

Corporation is bound to continue to apply its income from the various undertakings to the payment of interest on the loans specifically charged on them, and, as regards any surplus, in relief of particular rates and to the other purposes for which it was ear-marked originally. . . . What may happen if there is a default and a question of ranking has arisen, we are not called upon to determine. In the meantime and pending that event, I think that no other income than the profits of the several undertakings and properties is operatively and effectively charged with payment of the interest on the various loans."

Failure to deduct tax.

Re Middlesbrough, Redcar, etc., Building Society ; ex parte Wythes (High Court of Justice, 1885).

It was held that income tax might be deducted from such part of repayments made to a Building Society as represented interest, but the Court declined to order an allowance to be made in respect of past deductions omitted to be made.

Galashiels Provident Building Society v. Newlands (Court of Session, Scotland, 1893).

A debtor made a payment of annual interest from which he omitted to deduct income tax. It was held that he could not compel the Society to refund the amount not so deducted. *Lord President*.—"I think it would be unsafe, in dealing with so artificial a system as that set up by the Income Tax Acts, to step beyond what the statute itself enacts." The correctness of the ruling was doubted by Lord Kinnear, although he agreed that the debtor could not succeed in this particular case.

Warren v. Warren (High Court of Justice, 1895).

It was held that income tax should be deducted from an annuity paid under a deed drawn to carry into effect the order of the Court. In case of omission to make the deduction no demand may be made for the sums which

INTEREST, ETC. (DEDUCTION OF TAX)—*contd.*

might have been deducted to be allowed from subsequent payments. *Kekewich, J.*—"There are, no doubt, conflicting cases on the subject, but there can be no reasonable doubt that a trustee cannot, because he has made a mistake in payment of an annuity, deduct what might have been deducted before."

Agnew v. Ferguson (Court of Session, Scotland, 1903).

The lessee of a mineral field paid income tax on the amount of certain royalties payable to the lessor, but omitted to make a corresponding deduction from such royalties. It was held (one judge dissenting) that the lessee could require the lessor to return to him the amount which should have been deducted. *Lord Trayner.*—"What the statute says is, that a person in the position of the pursuer, who has paid income tax on the profits of his landlord, 'shall be entitled and is hereby authorised, on making such payment (*i.e.*, payment of the royalties in this case) to deduct and retain thereout the amount of the duty.'" This, I think, confers on the tenant a privilege—the privilege of reimbursing himself to the extent of the duty paid out of the sum due by him to the landlord. It gives the tenant (as it has been expressed) a lien over the royalties for the repayment of the duty. But the tenant need not avail himself of the privilege or exercise the lien. He may lose by not doing so, as for example in the case of the landlord's bankruptcy. But it does not appear to me that because a tenant does not use a privilege conceived in his favour alone—provided for his protection and not at all intended for the benefit of the landlord—that he thereby loses his right to what is palpably a just claim."

Countess of Shrewsbury v. Earl of Shrewsbury (High Court of Justice, 1906).

This followed on the case set out on page 110. The husband had made certain payments without deducting tax therefrom, and was also about to make payment of certain arrears of the allowance. It was held (1) that he could

INTEREST, ETC. (DEDUCTION OF TAX)—*contd.*

not recoup himself for the tax not deducted from payments already made, but (2) that tax might be deducted from the arrears when paid. (1) *Kekewich, J.*, rejected the argument that an annual payment was only completed when the first instalment thereof was paid. (2) He remarked that the provision in the Income Tax Act, 1842, s. 158 (see page 320), the duty should be deducted 'at such time in each year as the said sums shall be payable' meant only that the legal right should then be ascertained. It meant that if the duty was not paid it could be sued for as on that day."

In re Sharp. Rickett v. Rickett (High Court of Justice, 1906).

The trustees of an estate paid annuities without deducting tax therefrom. *Swinfen Eady, J.*—"Upon the construction of this will it is quite clear the income tax ought to have been deducted, and so I decide. The annuities were not given free of tax, and there were no words from which it could be fairly inferred that a sum equal to the tax was also given to the annuitants. The result is that the income tax should have been deducted, and it was a breach of trust to pay to the annuitants so much of the amount that they received as should have been reserved and accumulated. It was a breach of trust, but still an honest breach of trust; a breach of trust for which the trustees are legally liable. As regards the sums paid away more than six years ago, they are barred by the Trustee Act, 1888, which enables the trustees to plead the Statutes of Limitation to these claims. That does not apply to any sum retained by the trustees in respect of their own annuities."

Re Sturmev Motors, Ltd. ; Rattray v. Sturmev Motors, Ltd.
(High Court of Justice, 1912).

A tenant paid income tax under Schedule A, but did not make a deduction in respect of such tax from his next payment of rent. It was held that he might make such

INTEREST, ETC. (DEDUCTION OF TAX)—*contd.*

deduction from a subsequent payment of rent. *Warington, J.*—"The effect of the Income Tax Act, 1842, Schedule A, No. IV, Rule 9, is that the tenant paying the tax is, under the last words I have read of the rule, to be acquitted and discharged of so much money as if it had actually been paid to the person to whom or for whom the rent shall have been due and payable. The rent, therefore, is to that extent discharged and no longer payable to the landlord. But the matter is made even clearer by s. 40, Income Tax Act, 1853, which contemplates that a deduction may be made in respect of rent accruing due over a period much longer than that in respect of which the payment is made."

Also see *Quarter Sessions of Glamorgan v. Wilson*, page 89, and *Lord Advocate v. Magistrates of Edinburgh*, page 96.

Railways, etc.—Tax may be deducted from interest payable to creditors, or such interest may be paid in full. See **Schedule A, No. IV, Rule I.** *Income Tax Act*, 1842, page 178.

Landlords may recover from others having interest in their property, at like rate. See **Schedule A, No. IV, Rule 10, *Income Tax Act*, 1842, page 180.**

Penalty for refusing to allow deduction—see under **Penalties. *Income Tax Act*, 1842, s. 103, page 137.**

All Contracts, covenants and agreements for the payment of any interest, rent or other annual payment in full without allowing such deduction shall be utterly void. (s. 103.)

Contracts, etc., not to deduct tax.

Lord Lovat v. Duchess Dowager of Leeds (Court of Equity, 1862).

The Duke of Leeds devised certain property to his wife for life, and required his trustees to "pay and defray all taxes, parliamentary, parochial, or otherwise, affecting the said hereditaments or any of them." It was held that income tax, though charged on persons, was a tax affecting hereditaments, and that the requirement that the trustees should defray such tax was not void

INTEREST, ETC. (DEDUCTION OF TAX)—*contd.*

under the Income Tax Act, 1842, s. 103. *Kindersley, V.C* —“ Being of opinion that there is nothing to prevent either the gift of an annuity free from deduction, or, as in this case, having given a certain estate to a person for life, and created a trust of other property, out of which the trustees are to pay the income tax of the party to whom it is given, it appears to me that there is nothing illegal in such a trust.”

Beadel v. Pitt (Court of Equity, 1865).

A new lease was required to contain the same provisions as an old lease, including a covenant to the effect that the rent should be increased in proportion to the amount of any tax that might be imposed on the lessor. It was held that the new lease could lawfully contain this covenant.

Lamb v. Brewster (Court of Appeal, 1879).

A tenant paid his rent in full for some years, his landlord agreeing to refund him the tax not deducted. At the death of the landlord it was held that his executors must refund the sums in question, the agreement not being void under s. 103 of the Income Tax Act, 1842.

Gleadow v Leetham (High Court of Justice, 1883).

A will required the trustees of an estate to pay certain “ clear yearly sums, free from all deductions and abatements whatsoever.” It was held that these words were not sufficiently definite to entitle the recipient to receive the sums without the deduction of income tax. *Kay, J.*—“ It was only where the word ‘ deduction ’ was coupled with the word ‘ taxes,’ or there was some other indication that it was meant to include income tax, that it was so construed.”

Luna v. School for the Indigent Blind at Liverpool (High Court of Justice, 1898).

Under a special Act of Parliament dated 1829, the institution was required to pay to the chaplain a salary of not less than £300 and not more than £500, “ without

INTEREST, ETC. (DEDUCTION OF TAX)—*contd.*

any deduction or abatement for taxes or otherwise, howsoever." It was held that, notwithstanding this provision, income tax should be deducted from the salary under the Income Tax Act, 1842, Schedule E, Rules 1 and 6. *Byrne, J.*—"Up to the present time, since 1884, the chapel authorities have been in the habit of paying over the full sum of £500, and the chaplain has been accustomed, as indeed he was bound to do, to pay his own income tax, out of the money received by him from them. They now propose, as it has been called to their attention that there is a duty imposed upon them by the Act of 1842, before paying the salary to detain out of it the income tax. It is a matter of collection. It is for the convenience of collection, and to ensure payment that the hand to pay tax is made by the statute, the payer instead of the payee in this case. But it is said that inasmuch as the special Act of Parliament provides that the salary, whether it is £300 or whether it amounts to £500, or intermediate sum, is to be paid without deduction or abatement for taxes, they cannot say they are to deduct, or detain, which is the same thing, this tax. It is equivalent to saying that they are to pay a further sum equal to the amount of the tax so as to make up the full sum of £500 to the chaplain. I do not think that it is the true effect of this legislation and of the bargain which has been entered into between the parties. I think the effect of it is this: that the Act of 1842 provides machinery imposing a duty upon the trustees to deduct or detain money from payments which would otherwise be made in full. That is imposed upon them by an Act of Parliament, and they cannot refuse to do it."

The Income Tax Act, 1842, s. 103 (see page 107) was relied upon in course of argument, although it was not referred to by the judge in express terms.

Dalrymple v. Dalrymple (Court of Session, Scotland, 1902).

Under a contract of separation a husband paid his wife a "free yearly allowance" of £1,000, such allowance being

INTEREST, ETC. (DEDUCTION OF TAX)—*contd.*

paid out of a "free yearly allowance" of £3,000 paid to the husband by his father under an antenuptial marriage-contract. It was held that tax might be deducted from the allowance of £1,000, notwithstanding that the father did not deduct tax from the allowance of £3,000. *Lord Adam*.—"Is then, this sum of £1,000 payable by Lord Dalrymple in respect of an obligation under a contract to that effect entered into by him? Or is it to be considered as a purely voluntary payment? If the latter is its character, then no income tax would be payable by Lady Dalrymple in respect of it, and Lord Dalrymple would not be entitled to deduct and retain any sum out of it in name of income tax. If the former is its character, then I think income tax is payable by Lady Dalrymple, and that Lord Dalrymple is entitled to deduct and retain the amount. *Prima facie*, the annuity is payable under a contract, because it is payable under a deed of separation and agreement entered into between the spouses. No doubt it is a contract revocable by either at any time, but so long as it stands unrevoked I do not think it differs from any other contract in respect of the binding nature of the obligations contained in it."

Shrewsbury v. Shrewsbury (*High Court of Justice*, 1906).

Under an agreement for separation a husband undertook to pay his wife £4,000 per annum "clear of all deductions." It was held that the husband was entitled to deduct income tax from payments made under that agreement. *Kennedy, J.*, remarked that s. 103 of the Income Tax Act, 1842, expressly covered the case of contractual obligation. Also see case on page 105.

Certificate.—Commissioners may grant a certificate of assessment to include interest paid out of profits charged under Schedule D, but no certificate shall be required for payments made out of profits or gains arising from lands, tenements, hereditaments or heritages or out of any annuity, pension, stipend or dividend in public annuities. (s. 104.)

INTEREST, ETC. (GENERAL)— GENERAL.

Annual Interest paid out of profits may not be deducted therefrom in assessing in respect thereof under Schedule D. See under *Schedule D, Case I, Rule IV*, page 269.

Non-annual interest payable out of profits.—*Disallowed* as a capital charge: see *Anglo-Continental Guano Works v. Bell*, page 262. *Allowed* as a trade expense: see *Scottish North American Co. v. Farmer*, page 263.

Payments prior to passage of Finance Act.—Where in any income tax year any half-yearly or quarterly payments have been made on account of any dividend, interest, or other annual profits or gains, previously to the passing of the Act imposing the tax for that year, and income tax has not been charged thereon or deducted therefrom, or has not been charged thereon or deducted therefrom at the rate ultimately charged for the said year, the amount not so charged or deducted shall be charged under Schedule D, Case VI.

The agents entrusted with the payment of the dividends, interest, or other annual profits or gains shall furnish a list containing the names and addresses of the persons to whom payments have been made, and the amount of those payments, upon a requisition made by the Board. (*Revenue Act, 1911, s. 14 (1).*)

Any person liable to pay any rent, interest, or annuity, or to make any other annual payment, shall be authorised to make any deduction on account of income tax for any income tax year which he has failed to make previously to the passing of the Act imposing the tax for that year, or to make up any deficiency in any such deduction which has been so made on the occasion of the next payment. He shall also be entitled, if there is no future payment from which the deduction may be made, to recover the sum which might have been deducted as if it were a debt. (*Revenue Act, 1911, s. 14 (2).*)

Also see *Provisional Collection of Taxes Act, 1913*, page 11.

Interest as damages.

In re National Bank of Wales, Ltd. (*High Court of Justice, 1898*).

A former director of a company was held to have been guilty of misfeasance in sanctioning the payment of

INTEREST, ETC. (GENERAL)—*contd.*

certain dividends, and was ordered by the Court to pay a certain sum with interest at 5 per cent. per annum over a course of years. In refusing to order the deduction of tax from such interest, *Wright J.*, said—"The matter must be regarded for this purpose as if the respondent had fraudulently given away £37,000 of the capital of the company. I ordered him, rightly or wrongly, to repay that sum, and I make an order the effect of which is to find that the company has, by its capital being withheld all these years, suffered damages equal to 5 per cent. per annum. If the company has suffered these damages, I see no reason why it should not get the whole of the damages back. *It is called 'interest,' but it is really damages for withholding its capital from the company.*"

Interest on winding-up.

Smith v. Law Guarantee and Trust Society, Ltd. (Court of Appeal, 1904).

It was provided in a debenture trust deed that the proceeds of the realisation of the assets of the company concerned should be appropriated first to the payment of arrears of debenture interest and then to the repayment of the principal. An order of the Court was obtained that such proceeds should be paid on account generally of principal and interest, and in fact the sums realised proved to be less than the amount of the principal. It was held that the proviso first referred to was intended for the protection of the debenture-holders and (in consideration of the open terms of the order made by the Court) that did they so elect the moneys paid them should be regarded as repayment of the principal sums, in which case income tax should not be deducted therefrom. It was not decided whether any part of the sums received should be regarded as interest in the hands of the individual debenture-holders for the purpose of assessments to income tax being made on them.

INTEREST, ETC. (GENERAL)—*contd.***Bank Interest.**

De Peyer v. The King (Court of Appeal, 1909).

A person obtained a loan from his bankers for the purpose of purchasing certain stock. Tax was deducted from the dividends paid to him, but he did not deduct tax from the interest paid to his bankers. It was held that the Board of Inland Revenue could not be compelled to pay him the amount not so deducted. *Cozens-Hardy, M.R.*—"Why, because he did not deduct from the interest but made a present of the income tax to his bankers, should that give him any right against the Crown? I am entirely unable to discover any possible reason why that should be so. (Counsel) at one time argued that the income tax had been paid twice over by the suppliant. It is said 'It has been deducted at its source, and Stuckley's Banking Co. Ltd. have paid income tax upon the whole of the interest which I paid to them.' That is a fallacy. Supposing that Stuckley's Banking Co. Ltd. had made no profit all through the year? They pay income tax upon the total profits of their banking business, calculated in a mode which I need not refer to. But it is a fallacy to say that they paid income tax upon this particular interest payable on their loan. They paid income tax only on the profits of the whole of their business. (*Referring to the concession under which the Board of Inland Revenue might have made the repayment in question if the loan had existed for a year or more.*) Obviously such a concession cannot and ought not by any means to be regarded as a creation of right."

It was not decided whether the appellant had in fact the right to deduct tax from the interest paid to his bankers.

See also *Mosse v. Salt*, page 94.

IRELAND—

Previous Acts shall apply to Ireland, as to England. (*Income Tax Act, 1853, s. 5.*) Subsequent Acts include Ireland.

Like powers are invested in the special commissioners, surveyors,

IRELAND—contd.

and other officers in Ireland, as are held by the general, additional and special commissioners, surveyors and other officers in England, for like matters. (s. 24.)

The enactments relating to Ireland are set out under the following headings—**Assessment : Appeals : Collection : General.**

ASSESSMENT.

Governors and Directors of the Bank of Ireland shall act as commissioners for assessing duties on their profits, and on annuities, dividends, interests, pensions and salaries payable by them. (s. 11.)

Schedules A and B.—The clerk of the Board of Guardians of every poor law union, or the person acting as such, shall transmit to the commissioners of inland revenue at Dublin, true copies of the last poor rates. The collector general in Dublin shall do this for his divisions.

The commissioners of inland revenue shall pay the cost of such copies, not exceeding two shillings and sixpence for every hundred ratings. (s. 12.)

The copies referred to above shall only be sent when required by the commissioners of inland revenue. (*Income Tax Act, 1854, s. 5.*)

Persons having the custody of poor relief valuations shall produce them at the request of any inspector, surveyor, or other officer, and permit him to make copies or extracts without payment. (*Income Tax Act, 1853, s. 19.*)

Duties shall be assessed by a poundage rate on the annual value according to the poor relief valuations.

Schedule A assessment shall be made on the landlord, immediate lessor or person rated to the poor.

Schedule B assessment shall be made on the occupier.

On appeal, the assessment may be reduced to the annual rent at which the property is worth to be let, even if this is less than the value in the poor relief valuation. If this reduced annual value is less than the actual rent, the tenant or occupier shall be assessed under Schedule A on the difference.

A person receiving rent out of hereditaments exempt from poor rates, and who is liable to be rated at one-half the poundage, shall be assessed under Schedule A on the full rent. (s. 13.)

The commissioners of inland revenue may order the revaluation

IRELAND—*contd.*

of any hereditaments of which they consider the valuation in force to be incorrect, having reference to the principles of law by which it should have been made. Duties under Schedules A and B shall be charged according to the revaluation, subject to appeal by any person aggrieved. (s. 14.)

A landlord shall be allowed a deduction under Schedule A, of the amount of the poor rate borne by him, in the preceding year, in respect of the premises assessed. Where the rent exceeds the assessment, the allowance shall be limited to the amount by which the assessment and the poor rate together exceed the rent. (s. 15.)

Where a person paying duty under Schedule A makes an annual payment from which he is entitled to deduct proportionate amounts of the duty and of the poor rate, the proportionate amount of the duty shall be based on the net duty payable by him after the allowance for poor rates. (s. 41.)

Assessments shall be made by surveyors of taxes or other officers of inland revenue, for the respective premises situate within a union, electoral division, or other district, as directed by the commissioners of inland revenue. They shall be signed by two special commissioners, who shall cause duplicates thereof, with their warrants for collecting and levying, to be delivered to such persons as they shall appoint collectors. (s. 16.)

Schedules D and E.—Assessments shall be made by surveyors of taxes or other officers of inland revenue appointed by the commissioners of inland revenue. They shall be allowed and signed by the special commissioners, who shall appoint the times and place for hearing appeals, and cause due notice of every assessment, and the time and place for hearing appeals, to be given by an officer of inland revenue to every person assessed. (s. 20.)

APPEALS.

All appeals shall be heard by the special commissioners, and their decision shall be final, except as in Section 22. The assessment shall be conclusive where no appeal is made at the time appointed. (s. 21.)

Any person aggrieved by the determination of the special commissioners may give written notice to the inspector or surveyor within ten days, requiring that the appeal shall be reheard by the

IRELAND—*contd.*

assistant barrister, or, in the county of Dublin, by the chairman of the sessions of the peace, or, in the City of Dublin, or the borough of Cork, by the recorder. Where such rehearing is required any statement in the possession of the special commissioners shall be transmitted by them to the assistant barrister, etc., who shall rehear and determine the appeal, and shall take the oath required of a special commissioner, and exercise the powers of a special commissioner in relation to the matter. His determination shall be final and conclusive. (s. 22.)

COLLECTION.

After the time for hearing appeals, the special commissioners shall cause duplicates of assessments, with warrants under the hand and seals of two of them, to be delivered to the officers of inland revenue or other persons named therein, appointing them collectors and empowering them to collect, demand, levy, and recover all sums charged in the duplicate. (s. 23.)

Powers exercised by collectors in England may also be exercised by collectors in Ireland. (*Taxes Management Act*, 1880, s. 96.)

Schedules A and B.—Duties may be collected, levied, and recovered by distress by the collector, from the person assessed, or the occupier of the property assessed; or they may be levied upon the particular premises assessed. All goods and chattels found on such premises, to whomsoever they belong, may be distrained and sold.

The duty under Schedule A may be collected, recovered or levied from the landlord or immediate lessor of the premises assessed whether named in the assessment or not. The means provided in 1 and 2 *Vict. c. 56* and 6 and 7 *Vict. c. 92* for the collection of the poor rate may be used to this end, provided that where the assessment was made on the tenant or occupier, the landlord or immediate lessor may only be so proceeded against in default of payment by the tenant or occupier, and for so much of the duty as shall be chargeable in respect of the rent payable yearly to such landlord or lessor. (*Income Tax Act*, 1853, s. 17.)

GENERAL.

Claims to exemption, etc.—The computation of the income of any person from any rent derived from property in Ireland, assessed under

IRELAND—*contd.*

Schedule A, shall be made after allowing for the poor rates chargeable on such rent, by deduction or otherwise. (s. 29.)

Claims shall be made to the special commissioners subject to appeal to the assistant barrister, etc. (s. 31.)

Lost Rent.—Landlords may claim the return of duty paid by them in respect of so much of their rent as is lost by the bankruptcy, insolvency or absconding of the tenant, by the fraudulent assigning or removing of his goods, or by reason of the property being waste or unoccupied. Application shall be made to the special commissioners within six calendar months after the expiration of the year of assessment. (s. 18.)

Deduction from Tithe Rent charges.—Any ecclesiastical person or body may, on proof to the special commissioners, be repaid the difference between the amount of income tax calculated on his gross income, and the amount to which he would have been liable supposing the income tax to have been assessed upon his income after deducting the charges to which it has been subjected during the preceding year in respect of

- (a) the tax payable to the ecclesiastical commissioners for Ireland,
- (b) poor rates,
- (c) the repayment of instalments for the building or repairing of glebe houses, and
- (d) other charges and matters of like nature as those in respect of which the ecclesiastical commissioners are directed to make allowances in estimating the value of property under 3 and 4 Will. 4, c. 37. (*Income Tax Act*, 1853, s. 33.)

No re-assessment.—No union, electoral division or place in Ireland shall be answerable for the amount of duties charged, nor for the neglect or default of the collector; nor shall any re-assessment be made in Ireland for any arrears or loss caused by any such neglect or default. (s. 25.)

Oaths.—In Ireland any of H.M.'s justices of the peace may administer all oaths or affirmations required or allowed to be taken before a commissioner or justice, by any person in any matter touching the execution of the Income Tax Acts. (*Taxes Management Act*, 1880, s. 24.)

Ejectment for Rent.—No action of ejectment for nonpayment of rent in Ireland shall be defeated on the ground that the person

IRELAND—*contd.*

liable to pay such rent is entitled, under the provisions of the Tax Acts, to a deduction which would reduce the amount due by him under a year's rent. (*Income Tax Act, 1853, s. 43.*)

Remuneration of Collectors.—Collectors shall receive such poundage or other reasonable remuneration as the Treasury shall direct. (s. 58.)

Payment in Postage Stamps.—See under **Collection**, page 47.

Commission on Land Sales.

Humphrey v. Peare (*High Court of Justice, Ireland, 1913*). The Irish Land Act, 1903, Section 23 (12) enacted as follows:—"When in the case of the sale of an estate to persons other than the Land Commission, an Agent has been employed by the Vendor to negotiate the sale, such sum as may be sanctioned by the Estate Commissioners may, with the consent of such Vendor, be paid to that Agent out of the purchase money as part of the costs connected with the sale." An agent contended that part of the negotiation fees received by him was compensation for loss of employment as agent to the estate. The fees referred to had been sanctioned by the Estates Commissioners under the subsection quoted. *Palles, C.B.*—"This money was paid as a commission incident to services performed in relation to the carrying out of a contract for sale, and is therefore part of the annual gains and profits of the agent arising from his vocation as such agent."

LIFE INSURANCE PREMIUMS—

Allowance.—Any person who shall have made insurance on his life, or on the life of his wife, or shall have contracted for any deferred annuity on his own life or on the life of his wife, with an insurance company, and any person who shall under any Act of Parliament be liable to the payment of an annual sum or to have an annual sum deducted from his salary or stipend, in order to secure a deferred annuity to his widow or a provision to his children after his death, shall be entitled to deduct the amount of the annual premium paid by him, or the annual sum paid by him or deducted as aforesaid, from any profits or gains assessable on him under Schedule D or E, or to have such assessments so reduced.

LIFE INSURANCE PREMIUMS—*contd.*

If such person shall be assessed under any Schedule, and shall have paid such assessment or have been charged by deduction or otherwise, he shall, on proof being made and the receipt for the annual payment being produced to the special commissioners, be granted repayment. (*Income Tax Act, 1853, s. 54.*)

Repayment must be claimed within three years of the end of the year of assessment. (*Income Tax Act, 1860, s. 10.*)

The allowance shall not reduce the income as estimated for purposes of exemption or abatement, neither shall it exceed one-sixth of the total income. (*Income Tax Act, 1853, s. 54.*)

Colquhoun v. Heddon (1890).

It was held that allowance may only be made for premiums on insurances effected with companies constituted according to the laws of the United Kingdom.

Note.—See subsequent legislation referred to below.

Hunter v. Attorney-General (*House of Lords, 1904.*)

It was held that when a part only of the nominal amount of a life insurance premium is paid by the insured, the balance being advanced as a loan by the company, that part only should be allowed as a deduction. *Lord Chancellor.*—"The whole point is that the deduction is to be allowed to the insured if the premium has been paid by him, and the whole reason I give for my judgment is that it has *not* been paid by him." *Lord Robertson.*—"In point of fact in a question of the extent by which his income was diminished during the year by the payment, there can be no doubt that it was only by £33 and not by £66."

Gould v Curtis (*Court of Appeal, 1913.*)

It was held that an allowance should be made in respect of the premium paid on a policy under which £100 is receivable if the assured dies within fifteen years, and £200 if he is alive at the end of that term. *Cozens-Hardy, M.R.*—"What is the meaning of those words 'contract of insurance on his life or on the life of his wife' as understood commonly in the business world, by insurance

LIFE INSURANCE PREMIUMS—*contd.*

companies, and by other people in the year 1853 and onwards? . . . I referred to Mr. Bunyon's book as an authority on this subject, the first edition of which was written in 1853 and published in 1854. . . . Mr. Bunyon gives this as a definition of life insurance: 'The contract of life insurance may be further defined to be that in which one party agreed to pay a given sum upon the happening of a particular event contingent upon the duration of human life, in consideration of the immediate payment of a smaller sum or certain equivalent periodical payments by another.' . . . I feel no doubt that, under the language of that section (54) the policy in question is a contract of insurance on his life, and none the less because in the event of his surviving fifteen years, which is a contingency dependent upon the continuance of his life, of course, he will receive £200."

Companies, etc., with which the contract may be made.

1. Any company existing on 1st November, 1844, or registered under the Joint Stock Companies Act, 1844. (*Income Tax (Insurance) Act*, 1853, s. 1.)
2. Commissioners for Reduction of the National Debt. (*Income Tax Act*, 1859, s. 6.)
3. Any Insurance Company legally established in any British Possession. (*Finance Act*, 1904, s. 9.)
4. Any Insurance Company carrying on business in Great Britain or Ireland. (*Revenue Act*, 1906, s. 11.)
5. Any Friendly Society legally established under the Friendly Societies Acts. (*Income Tax (Insurance) Act*, 1853, s. 1.)

Where premiums are paid for shorter periods than three months, the production of a certificate signed by an officer of the Society to the surveyor of taxes, specifying the correct amount of premiums paid during the year, shall be a condition of claiming relief. (*Revenue Act*, 1903, s. 10.)

NON-RESIDENTS IN THE UNITED KINGDOM—

Assessments in respect of property or profits in the United Kingdom—see under **Schedule D**, pages 205 and 229; see also analysis on page 375.

NON-RESIDENTS IN THE UNITED KINGDOM*—contd.*

Claims to exemption, abatement or relief, which depend wholly or partially on the total income of an individual from all sources, shall be allowed only when the person claiming is resident in the United Kingdom.

Provided that any person who is, or has been, employed in the services of the Crown, who is employed in the service of any missionary society abroad, who is employed in the service of any of the native states under the protectorate of the British Crown, who is resident in the Isle of Man or Channel Islands, or who satisfies the commissioners that he is resident abroad for the sake of health, shall be entitled to any relief, exemption or abatement to which he would be entitled if he were resident in the United Kingdom, and if his total income from all sources were calculated as including any income in respect of which income tax may not be chargeable, as well as income in respect of which income tax is chargeable. (*Finance (1909-10) Act, 1910, s. 71 (1).*)

The proviso to the Finance (1909-10) Act, 1910, s. 71 (1) (which gives the right to persons resident abroad to claim relief, exemption, or abatement from income tax in certain cases) shall apply to a widow who is in receipt of a pension chargeable with income tax and granted to her in consideration of the employment of her late husband in the service of the Crown. (*Revenue Act, 1911, s.12.*)

Exemption in respect of tax on foreign interest payable in the United Kingdom, where the persons entitled thereto are non-resident—see under **Schedule D.** *Cases IV and V, page 294.*

Foreign Debenture Holders.—See *Alexandria Water Co. v. Musgrave*, page 269.

NUMBER OR LETTER ASSESSMENTS—

Where a person charged declares his intention of paying the duty to the proper officer for receipt within the time limited, a numbered or lettered certificate (without name) shall be delivered to him, which shall be sufficient authority for the officer for receipt to accept duty and issue a certificate of receipt. (*Income Tax Act, 1842, s. 137.*)

If the duty is not paid accordingly, the name and amount of duty shall be entered in the collector's duplicate and his warrant shall apply. (s. 138.)

NUMBER OR LETTER ASSESSMENTS—*contd.*

General commissioners may issue duplicates of the assessments under a number or letter to the officers for receipt, with their warrant to receive the duties and to levy for arrears. (s. 139.)

The duties shall be paid before the day appointed, and certificates of receipt shall be sent to the clerk to commissioners before this time. If any person neglects to pay, or to deliver the certificate to the clerk to commissioners, the commissioners shall deliver duplicates of all assessments in default, under warrant, to the collector. (s. 140.)

Duties may be paid in advance to the officer for receipt, who may allow discount at 4 per cent. *per annum* (from the date of payment to January 1st next). (Now $2\frac{1}{2}$ per cent.—*Revenue Act*, 1889, s. 10.) (*Income Tax Act*, 1842, s. 141.)

For payments so made one certificate, or separate certificates, as required, shall be given. On delivery of the certificate to the commissioners, the clerk shall give a receipt. (s. 142.)

Arrears shall be added to the collector's duplicate and the ordinary powers shall apply. (*Taxes Management Act*, 1880, s. 93.)

OATHS—

Definition.—"Oath" shall mean and include an affirmation, in the case of Quakers or other persons entitled by law to make an affirmation in lieu of an affidavit or oath. (*Income Tax Act*, 1842, s. 192.)

Administration.—Land tax or general commissioners may administer oaths under the Income Tax Acts. (*Taxes Management Act*, 1880, s. 32.)

The oath prescribed in relation to Schedule D may be administered by general, additional or special commissioners, except that general or special commissioners shall administer it to general, additional or special commissioners. (*Income Tax Act*, 1842, s. 38.)

Schedule D.—General commissioners, additional commissioners, special commissioners, assessors, collectors, clerks, clerk's assistants, inspectors, surveyors and officers for receipt, shall, before acting in the execution of this Act so far as relates to Schedule D, take the oath prescribed. (s. 38.)

See also under **Affidavits**.

¹ PARISHES, DIVISIONS, ETC.—

Definition.—"Parish," in Taxes Management Act, 1880, means any town, ward, township, tithing, parish, place or precinct for which a separate assessment may be made, or for which an assessor or collector may be lawfully appointed. (*Taxes Management Act*, 1880, s. 5.)

Poor Law Parishes shall be adopted for the duties. (*Revenue Act*, 1884, s. 6 (1).)

Poor Law parish alterations shall not take effect during the continuance of the assessments according to the sums charged in the preceding year. (*Customs and Inland Revenue Act*, 1890, s. 27.)

The Board may alter income tax parishes accordingly and make transfers, as necessary, to the jurisdiction of the proper commissioners. (*Taxes Management Act*, 1880, s. 38.)

(Section extended to all new parishes and amalgamations. *Revenue Act*, 1883, s. 13.)

Jurisdiction.—*Parish in two counties or divisions* shall be assessed by the commissioners for the division or county in which the church is situated.

Dwelling-house or other premises occupied therewith in two parishes shall be assessed where the surveyor deems most expedient. The commissioners for that parish shall be informed. (*Taxes Management Act*, 1880, s. 53 (1).)

The above subsection shall not apply to Scotland. (*Customs and Inland Revenue Act*, 1881, s. 25.)

Doubt as to the district or parish where a person should be assessed—the Board shall decide in this case. (*Taxes Management Act*, 1880, s. 53 (2).)

Doubt as to parish in which lands are and as to extra parochial lands,—the Board shall decide; they may vary their order. (s. 54.)

Parish in jurisdiction of two bodies of commissioners—Board shall decide which body shall have jurisdiction. (*Revenue Act*, 1884, s. 6 (2).)

(This section shall not apply to Lambeth or Inns of Court. —*Customs and Inland Revenue Act*, 1890, s. 27.)

Alterations.—*Transfer of Parish to another Division.*—The land tax commissioners at a general meeting may transfer the jurisdiction of any parish, together with the quota of land tax payable, to any

¹ Refers also to House Duty.

¹PARISHES, DIVISIONS, ETC.—*contd.*

division, or may make a new division. The alteration shall be subject to Treasury approval and shall take place from the time fixed by the Board. (*Taxes Management Act*, 1880, s. 36.)

(This section shall not apply to cities, etc., for which separate Quotas are enumerated in Land Tax Acts—s. 36.)

Uniting, disuniting, grouping and dividing.—Parishes may be united by the land tax commissioners (at a meeting called for the purpose) subject to Treasury approval. The alteration shall date from the time fixed by the Board. This section shall not allow any alteration in the land tax quota of any parish.

Disuniting parishes joined.—This may be done by the Treasury on the resolution of the land tax commissioners. (*Taxes Management Act*, 1880, s. 37.)

Parishes may be grouped by the land tax commissioners, with the assent of the Board (for purposes of collection only). The grouping may be dissolved on the same authority. (s. 72.)

Division of Parishes into collecting districts, by the Board with Treasury sanction, is allowed, for separate assessment and appointment of collectors and assessors. (*Revenue Act*, 1884, s. 6 (3).)

The division may be annulled on the same authority. (s. 6 (4).)

Division means any hundred, rape, lathe, stewarty or district or any place of separate jurisdiction under Land Tax Acts. (*Taxes Management Act*, 1880, s. 5.)

Scotland.—Where lands are in more than one jurisdiction, or where it is desirable to transfer lands from one to another, at the request of the general commissioners concerned, the Board shall determine the jurisdiction. (*Revenue Act*, 1903, s. 12.)

PATENT ROYALTIES—

No deduction from profits.—In estimating, under any schedule, the amount of the profits and gains arising from any trade, manufacture, adventure, concern, profession, or vocation, no deduction shall be made on account of any royalty or other sum paid in respect of the user of a patent.

Deduction of tax therefrom.—The person paying the royalty or sum shall be authorised, on making the payment, to deduct and

¹ Refers also to House Duty.

PATENT ROYALTIES—*contd.*

retain thereout the amount of the rate of income tax chargeable during the period through which it was accruing due. (*Finance Act, 1907, s. 25 (1).*)

Payments not out of profits.—Customs and Inland Revenue Act, 1888, s. 24 (3) shall apply to such royalties and sums as it applies to interest (see under **Interest**, page 99). (s. 25 (2).)

Lanston Monotype Corporation, Ltd. v. Anderson (Court of Appeal, 1911).

The Company paid certain patent royalties in 1904, 1905, and 1906, but they ceased on 1st January, 1907. It was held that, in arriving at the assessment for 1907-8, the sums so paid should be allowed as deductions in the three years' accounts. The Finance Act, 1907, s. 25, was not considered to be a charging section, and the prohibition of such deductions was held to be conditional on the payer being able to recoup himself under the latter part of the section. *Farwell, L. J.*—"The words 'any royalty or other sum paid in respect of the user of a patent' are necessarily confined to the royalty or sum which is spoken of two lines below, on making payment of which the person paying is entitled to deduct. Inasmuch as the Crown was entitled to and has, I presume, received from the patentee or the royalty owner the income tax on the royalty for the two former of the three years in question, it certainly does seem harsh to say the least of it, to exact it over again from another person, and I do not think that the Legislature so intended."

PENALTIES—**ASSESSOR.**

Omission to assess property of the annual value of less than £10 where no return is required—penalty not exceeding £10. (*Income Tax Act, 1842, s. 65.*)

¹ Person to whom a precept is directed.

(a) For wilful neglect or refusal to appear before the commissioners.

¹ Refers also to House Duty.

PENALTIES—*contd.*

- (b) After having appeared, for refusal to be appointed.
- (c) After having appeared, for refusal to make and subscribe the prescribed declaration of office
—for every offence, penalty of £10. (*Taxes Management Act*, 1880, s. 46 (1).)

¹Person appointed as assessor by general commissioners ;

- (i) For neglect or refusal to perform duty.
- (ii) For wilful neglect or refusal to charge and assess himself and all other persons chargeable, or to make his assessment in accordance with the law.
- (iii) For acting as assessor before taking the declaration of office
—penalty for every offence £20. (s. 46 (2).)

¹Person appointed as assessor by justices or magistrates ;

- (a) For wilful neglect or refusal to take on himself the office.
- (b) " " " " " to perform his duty.
- (c) " " " " " to charge himself and all other persons chargeable, or to make his assessment in accordance with the law.
- (d) For neglect or refusal to make a declaration of office
—for every offence £50. (s. 46 (3).)

Assessor on Offices shall deliver a certificate of assessment, without abatement or deduction, concealment or favour, upon pain of forfeiture for every neglect of any sum not exceeding £100 nor less than £20. (*Income Tax Act*, 1842, s. 150.)

He shall be liable to penalties as other assessors. (s. 157.)

¹GENERAL COMMISSIONER.

For not withdrawing from the meeting during the consideration of any matter of controversy in which he is interested personally—penalty £50. (*Taxes Management Act*, 1880, s. 35.)

CLERK TO COMMISSIONERS.

¹Misconduct.—A clerk, or clerk's assistant, having taken the oath, and wilfully obstructing or delaying the execution of this Act, or negligently conducting or wilfully misconducting himself in the execution of this Act—to forfeit £10, to be dismissed and to be

¹ Refers also to House Duty.

PENALTIES—*contd.*

rendered incapable of again acting as clerk to commissioners or as clerk's assistant. (*Income Tax Act*, 1842, s. 9 and *Taxes Management Act*, 1880, s. 41 (3).)

¹**Charge Duplicates.** For neglect or refusal to deliver charge duplicates as directed, or for a wilful false entry in or omission from such duplicates—penalty £100 and discharge from office. (*Taxes Management Act*, 1880, s. 70 (6).)

¹**Alteration of Assessment.**—A clerk or any other person altering or causing, or procuring, or suffering to be altered any assessment, after its allowance by the commissioners (except for such alterations as are provided for to be made by order of the commissioners),—penalty £50. (s. 57 (4).)

COLLECTOR.

Person nominated to be Collector.—If notice of refusal to act shall not be given as prescribed, the penalty for non-attendance at the meeting to receive appointment shall be £50. (*Taxes Management Act*, 1880, s. 73 (4).)

Surplus Land Tax.—Collector wilfully detaining, withholding or misapplying, or refusing or neglecting to account for, or disregarding lawful directions given him respecting any excess or surplus of land tax shall be liable to the same penalties imposed as regards any other duties. (s. 114 (6).)

¹**Receipt.**—(a) Refusing, neglecting or omitting to give receipt on the prescribed form for duties received, or to fill up and to keep the counterfoil ;

(b) Giving a receipt other than on the form prescribed and provided by the Board

—penalty £10. (s. 121 (1).)

¹**Schedule.**—Collector refusing or neglecting to deliver schedule of arrears as directed—penalty £20. (s. 121 (2).)

¹**Collection, examination and accounting for moneys.**—(i) Refusing or neglecting to bring to the Receipt his duplicates showing an account of all moneys received, or instead thereof a certificate by the commissioners with an account in writing, signed by him, of all moneys received ;

¹ Refers also to House Duty.

PENALTIES—*contd.*

- (ii) Refusing or neglecting to take an oath to the schedule of arrears or to answer any lawful question at the Receipt or to sign the answer ;
- (iii) Declaring in any answer any matter which shall be false ;
- (iv) Advancing or lending to any person any part of duties collected ;
- (v) Applying any part of the duties to his own use ;
- (vi) Delivering any part of the duties to any person so that the full sums shall not be paid over to the collector of inland revenue at the times when the same ought to be paid ;
- (vii) Refusing or neglecting, on clearing his accounts, to deliver his duplicate of assessment, receipt books and counterfoils ;
- (viii) Refusing or neglecting to appear to answer questions when summoned by the commissioners ;
- (ix) Refusing or neglecting to produce accounts, books, and receipt counterfoils to the commissioners ;
- (x) Refusing or neglecting on revocation of appointment to deliver up books, etc.

—penalty £50 with costs and charges (which penalty and costs shall be added to the assessments and levied in like manner as the duties). (s. 121 (3).)

Collector refusing to pay over duties not accounted for—penalty of £50 with costs, and interest at 5 % per annum on the whole sum detained, which shall be added to the assessments. (s. 121 (4).)

- (a) Collecting any of the duties by any book or duplicate other than that signed by the commissioners.
- (b) Receiving any such duties from any person not charged therewith in the duplicate.
- (c) Collecting more money than is actually charged.
- (d) Not paying over the whole duties collected.
- (e) Fraudulently altering any rate book or duplicate allowed by the commissioners.
- (f) Refusing or neglecting to make a return, upon oath as prescribed, of persons from whom duties cannot be collected —penalty £100 for every offence. (s. 121 (5).)

Offices.—Collector for duties on offices shall be liable to like penalties as other collectors. (*Income Tax Act, 1842, s. 157.*)

PENALTIES—*contd.*

¹ **Books.**—Person having the custody of books or papers relating to land tax or the duties, and not delivering them up within one month of the Board's order to do so—penalty £50 for every offence. (*Taxes Management Act*, 1880, s. 34.)

¹ **Failure to account.**—Collector and other person entrusted with the collection or receipt of inland revenue failing to render accounts or to remit the moneys at the prescribed time—see under **Accounts**—page 5. (*Inland Revenue Regulation Act*, 1890, s. 14 (2).)

SURVEYOR.

¹ Surveyor wilfully making a false and vexatious charge—wilfully delivering (or causing to be delivered) to the general commissioners a false and vexatious certificate of charge, or of objection to any supplementary return—being guilty of any fraudulent, corrupt or illegal practice in the execution of his office—knowingly or wilfully, through favour, undercharging or omitting to charge any person;—penalty for every offence £100 and on conviction to be discharged from office. (*Taxes Management Act*, 1880, s. 18.)

Surveyor (or any person) guilty of wilfully and corruptly making a false statement in any oath of the service of a notice of surcharge—to be held guilty of misdemeanour, and liable to imprisonment for six months with or without a fine not exceeding £50. (s. 63 (4).)

Penalties shall apply to surveyors or inspectors acting in relation to the duties on offices. (*Income Tax Act*, 1842, s. 157.)

¹**COLLUSIVE AGREEMENT.**

If any commissioner or collector or officer or person employed in relation to inland revenue directly or indirectly asks for or receives any sum of money or recompense or promise of money or recompense, or enters into or acquiesces in any collusive agreement to do, abstain from doing, conceal or connive at any act whereby Her Majesty is or may be defrauded—fine £500, and on conviction he shall be incapable of ever holding office under the Crown. (*Inland Revenue Regulation Act*, 1890, s. 10 (1).)

If any person gives or offers such sum or proposes or enters into such agreement—fine for each offence £500. (s. 10 (2).)

The offender who, before information is lodged against him, first

¹ Refers also to House Duty.

PENALTIES—*contd.*

discovers and informs against any other offender shall be discharged and acquitted from the fine or disqualification. (s. 10 (3).)

FAILURE TO DELIVER REQUIRED RETURN.

Any person who ought to deliver any list, declaration, or statement, as aforesaid (see **Returns**, page 147), who shall refuse or neglect to do so within the time limited, or shall wilfully delay the delivery thereof,—

on information before the commissioners, shall forfeit any sum not exceeding £20, and treble the duty at which such person ought to be charged, the increased duty being added to the assessment and the penalty being recoverable as any penalty in this Act is by law recoverable (subject to a stay where a trustee, etc., required to make a return for another person, for satisfactory reasons delivers an imperfect return and the commissioners grant further time) ;

or on information in a court of law, in the case of any person not assessed in treble duty as aforesaid, shall forfeit £50. (*Income Tax Act, 1842, s. 55.*)

Lord Advocate v. A. B. or Sawers (Court of Exchequer, Scotland, 1897).

Held that the penalty imposed in Section 55, Income Tax Act, 1842, applies to a case where an incorrect return has been made. *Lord Ordinary*.—"When Section 55, coming as it does immediately after Section 52, refers to 'any statement as aforesaid' it must be understood as meaning the true and correct statement which is required by Section 52 (see page 148). The reasonable reading of Section 55 is that if there is a failure to deliver the kind of statement required by Section 52, either by delivering no statement at all, or by delivering a statement which is untrue or incorrect, then the penalty is incurred. . . . I have nothing to do with the motives of the defender, or with his conduct in a moral sense. I can only say whether the penalty has been incurred by the failure to deliver a correct statement."

Attorney-General v. Till (House of Lords, 1909).

It was held that the penalty imposed by Section 55

PENALTIES—*contd.*

Income Tax Act, 1842, applies to the case where a return is delivered which is not true and correct. *Lord Chancellor.*—"Section 55 enacts that he must either be liable to the penalty or do what by the Act he ought to do. What he ought to do is described in Section 52 (see page 147), which requires him to deliver "a true and correct statement in writing." If he does not deliver a true and correct statement, or if he does not deliver any statement at all, he, in either case, equally fails to do what he ought to do. . . . I do not think that an innocent mistake exposes a man to these penalties. On the one hand, hundreds of thousands if not millions of people are required to make returns. It is necessary therefore that there should be a sharp weapon available in order to prevent the requirements of the Act being trifled with. On the other hand, the making of the return or statement is not always easy, and mistakes may occur notwithstanding that care may have been used to avoid them, still more when proper care has not been used. Accordingly, provision is made for penalties which are to fall in the event either of unpunctuality or of inaccuracy in the return or statement required. But alongside of that are to be found provisions to relieve a man from the penalty if he mends his mistakes. In the present case this result could be secured by Section 129 (see page 28). I see nothing either harsh or unreasonable in this. A fair balance is held, and while the revenue is protected against procrastination and carelessness which, if practised on any large scale, would make the collection of the tax an intolerable business, any one who though honest has been neglectful may redeem his neglect." *Lord Atkinson.*—"One of the rules applicable to the declaration of a person returning a statement of profits under Schedule D is the 15th Rule. (See Schedule G, page 148). It provides that if the person shall declare the truth of the statement, and that the profits are fully stated upon every description of property appertaining to the declarant 'estimated to the best of his judgment and belief according to the directions and rules of the Act.'

PENALTIES—*contd.*

If a person discovers that the statement he has lodged, though framed according to the best of his judgment and belief at the time he made it, is wrong in fact, he might be guilty of a fraud upon the Revenue if he allows himself to be assessed on an estimate which he subsequently discovered to be erroneous. . . . In this case the jury have found, in answer to the question left to them, that he was guilty of negligence in framing his statement, which I think must be taken to be a finding that he did not estimate his profits and gains 'to the best of his judgment and belief according to those rules.' *Lord Gorell*.—"It may perhaps be doubted whether Section 129 (see page 28) applies only to the immediately preceding sections, but it comes in the category of sections relating to Schedule D, and, in my opinion, covers the case of a statement to be made and delivered according to the provisions of Section 52."

Return of Employees required under Finance Act, 1907, s. 21 (1), (see **Returns**, page 146)—in case of failure Section 55, Income Tax Act, 1842, shall apply. (*Finance Act*, 1907, s. 21 (1).)

Return of Profits.—Every person on whom a notice is served under Section 48, Income Tax Act, 1842, requiring a return of profits, whether he is chargeable to duty or not, shall be liable to a penalty under Section 55 in default of making a return.

No person who shall prove that he is not chargeable to the duties shall incur, under this section, a penalty exceeding £5 for one offence. (*Finance Act*, 1907, s. 22 (1).)

Person coming to a parish in which he is not charged, and not making a return when required, or making a false return—shall forfeit a sum not exceeding £20. (*Income Tax Act*, 1842, s. 177.)

Schedule C.—Any person entrusted with the payment of annuities, etc., neglecting to deliver an account—shall forfeit £100 over and above the duty. (*Income Tax (Foreign Dividends) Act*, 1842, s. 2 and *Income Tax Act*, 1842, s. 96.)

Super-Tax.—If any person without reasonable excuse fails to make any return, or to give any notice required by this section, he shall be liable to a penalty not exceeding £50, and after judgment has been given for that penalty to a further penalty of the like amount

PENALTIES—*contd.*

for every day during which the failure continues.—(Penalties are recoverable in the High Court, or in Scotland in the Court of Session.) (*Finance* (1909-10) *Act*, 1910, s. 72 (4).)

Lands in the same occupation in different parishes. If any occupier wilfully omits to deliver an account (the proportions in each parish and belonging to distinct owners being required to be stated), he shall be charged for the lands so omitted at treble rate over and above the penalty imposed. (*Income Tax Act*, 1842, s. 60. *Schedule A*, No. IV, Rule 2.)

FALSE RETURN.

“False.”—See dicta in *Lord Advocate v. McLaren*, page 134, as to the legal meaning of this word.

Profits.—If any person who ought to be charged shall, by making and delivering any such statement or schedule as aforesaid which shall be false or fraudulent, not be charged and assessed according to the true meaning of the Act—he shall, on proof before the general commissioners, be charged and assessed treble the amount of the charge (or part of charge) omitted. The increase shall be added to the assessment. (*Income Tax Act*, 1842, s. 178.)

If any person knowingly and wilfully makes (otherwise than on oath) a statement false in a material particular, and the statement is made—

- (a) in a statutory declaration ; or
- (b) in an abstract, account, balance sheet, book, certificate, declaration, entry, estimate, inventory, notice, report, return, or other document which he is authorised or required to make, attest, or verify, by any public general Act of Parliament for the time being in force ; or
- (c) in any oral declaration or oral answer, which he is required to make by, under, or in pursuance of any public general Act of Parliament for the time being in force,

he shall be guilty of a misdemeanour, and shall be liable, on conviction thereof on indictment, to imprisonment, with or without hard labour, for any term not exceeding two years, or to a fine or to both such imprisonment and fine. (*Perjury Act*, 1911, s. 5.)

Property.—Every person who shall wilfully deliver any return under Schedule A as to the value of premises which shall be false,

PENALTIES—*contd.*

or who shall wilfully refuse, neglect or omit to produce any lease or agreement with intent to conceal the annual value of the premises, or to diminish the estimate to be made thereon, shall forfeit £20 and be liable to be charged in treble duty. (*Income Tax Act, 1842, s. 68.*)

FALSE CLAIMS.

Abatement for loss by floods.—False claim, or fraud or contrivance in making a claim or fraudulent or untrue declaration as to the value of the loss or amount of abatement in rent—to forfeit £50 and treble duty charged on the said lands. (*Income Tax Act, 1842, s. 86.*)

Exemption of Stock.—False or fraudulent claims—to forfeit £100, and if the claim is made by a person in his own behalf he shall be liable to be assessed in treble duty on the said shares and annuities. (s. 99.)

Claim to Exemption.—If any person shall be guilty of any fraud or contrivance in making such claim or in obtaining exemption, shall fraudulently conceal or untruly declare any income or amount of income, or any sum which he may have charged or been entitled to charge against any other person (which he may have deducted or retained or been so entitled) or make a second claim for the same cause—to forfeit £20 and treble duty on all the sources of his income and as if such claim had not been allowed. (s. 166.)

Lord Advocate v. McLaren (Court of Exchequer, Scotland, 1905).

Under Section 166, Income Tax Act, 1842, it was held that the penalty (1) may be imposed whether the allowance falsely claimed is made or not, and (2) imposes treble duty on the whole income of the person making it, for the year in question, and not on the uncharged portion only. It was further decided that it is not within the competence of the court to modify the penalty. *Lord Adam.*—“The Act says that if any person shall be guilty of any fraud or contrivance in making such claim, or in obtaining any such exemption (that is to say, whether the claim shall be successful or not) the penalties shall be incurred.” *Lord Kinnear.*—“The offence charged in terms of the

PENALTIES—*contd.*

166th Section is not, in my opinion, an inaccurate declaration, but a false or untruthful declaration. I shall be slow to adopt a construction which should place any simple error in the same category and punish it with the same severity as the other offences defined in this section, namely, fraud or contrivance in making a claim or obtaining an exemption, and I do not think that this is within the ordinary meaning of the words of the enactment. A charge of declaring it an untruth seems to me to imply the intention to deceive, and the adverbial clause of the phrase confirms this implication, because it directs attention to the action and effect of the declarant, and not merely to the contents of the declaration itself. When a man is said to make a declaration untrue, that means in ordinary language that the man himself is untrue, and not merely that his declaration is untrue."

Life Insurance.—Any person wilfully giving or producing a false certificate (see **Life Insurance**, page 120)—penalty £50. (*Revenue Act*, 1903, s. 10.)

Loss proved at the end of year—penalty for fraud or contrivance £50. (*Customs and Inland Revenue Act*, 1890, s. 23 (3).)

ON APPEAL.

Any person summoned to appear as witness, or any person (other than the clerk, etc., of the appellant) not appearing, refusing to be examined or sworn, or to answer any lawful questions—to forfeit any sum not exceeding £20. (*Income Tax Act*, 1842, s. 125.)

Any person neglecting to deliver the schedules required by the commissioners, or to appear before the commissioners, or to verify on oath any statement or schedule delivered by him—shall forfeit any sum not exceeding £20, and treble duty at which he ought to be assessed. (s. 128.)

¹ ON SURCHARGE.

False declaration by person surcharged—to be guilty of misdemeanour and liable to imprisonment for not exceeding six months, and to be fined in a sum not exceeding treble the duty charged, as

¹ Refers also to House Duty.

PENALTIES—*contd.*

the court shall order. (Indictment shall be laid in the county where the declaration was exhibited to the general commissioners.) (*Taxes Management Act*, 1880, s. 66.)

Also see under **Surveyor**, page 331.

GENERAL.

If any person for the purpose of obtaining any allowance, reduction, rebate or repayment, in respect of any duty under this Act, either for himself or for any other person, or in any return made with reference to any duty under this Act, knowingly makes any false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding six months with hard labour. (*Finance (1909-10) Act*, 1910, s. 94.)

Defacing, tearing or obliterating wilfully any church door notice—penalty any sum not exceeding £20. (*Income Tax Act*, 1842, s. 47.)

Wilfully obstructing an inspector or surveyor in his duty of examining assessments, before and after the commissioners have signed them—penalty £50. (s. 161.)

¹ Wilfully obstructing a surveyor, assessor or collector in the execution of his office or duties—for every offence, penalty £50. (*Taxes Management Act*, 1880, s. 23.)

¹ Obstructing, molesting or hindering

(a) an officer or any person employed in relation to inland revenue in the execution of his duty, or

(b) any person acting in aid of an officer

—fine £100 for every offence. (*Inland Revenue Regulation Act*, 1890, s. 11.)

Person, not being an officer, assuming the character of an officer for the purpose of obtaining admission into any house or procuring any act to which he is not entitled or for any other unlawful purpose—to be guilty of misdemeanour and liable on summary conviction to imprisonment for not exceeding three months with or without hard labour. (s. 12.)

Persons fraudulently changing residence, converting property (or security, etc.), or rendering property unproductive, in order not to be charged for the same or any part, or who by falsehood, wilful neglect, fraud, covin, act, or contrivance shall not be charged

¹ Refers also to House Duty.

PENALTIES—*contd.*

according to the true meaning of the Act—penalty as for false return of profits, see page 86. (*Income Tax Act, 1842, s. 178.*)

Aiding or abetting a false claim to exemption—penalty £50. (*Income Tax Act, 1842, s. 166.*)

Aiding or abetting a false return of profits or value of land—penalty £50. (*Income Tax Act, 1853, s. 56.*)

Refusing to permit inspection of, or copying from Rate Book—penalty:—£5 to £20 in Great Britain. (*Income Tax Act, 1842, s. 76.*)

—£10 in Great Britain. (*Taxes Management Act, 1880, s. 39.*)

—£15 in Ireland (also for not making copies required). (*Income Tax Act, 1853, s. 19.*)

Refusing to allow deduction of tax out of annual interest—to forfeit treble the value of the principal money. (*Income Tax Act, 1842, s. 103.*)

Refusing to allow deduction of tax out of any rent or other payment mentioned in the 9th and 10th Rules of No. IV, Schedule A, or out of any annuity or annual payment mentioned in Schedule C, or in Section 102 (except annual interest as aforesaid)—to forfeit £50. (*s. 103.*)

Refusal to allow deduction of tax from rent, yearly interest, annuity or other annual payment—to forfeit £50. (*Income Tax Act, 1853, s. 40.*)

Removing from the parish to evade assessment, without discharging the assessment made or without leaving goods sufficient to discharge the assessment, and leaving tax unpaid for twenty days after being due—penalty £20 in addition to duty. (*Income Tax Act, 1842, s. 177.*)

False oath, affidavit, etc.—liable to penalties for perjury. Indictment shall be in the county where the affidavit is exhibited. (*s. 180.*)

¹ Any person having a collector's duplicate of assessment and refusing to deliver it to the collector on his demand shall incur a penalty of £100. (*Taxes Management Act, 1880, s. 84 (2).*)

Forging or altering certificate or receipt authorised to be given on the receipt of any money payable under this Act—or uttering such forgeries.—Offender shall be judged guilty of felony and shall

¹ Refers also to House Duty.

PENALTIES—*contd.*

be transported for a term not exceeding fourteen years. (*Income Tax Act, 1842, s. 181.*)

¹ Any unauthorised person who shall unlawfully receive public moneys from a collector shall forfeit double the amount so received. (*Taxes Management Act, 1880, s. 102.*)

Commissioners and officers acting in relation to Schedule D before having taken the oath prescribed (see **Oaths**, page 122)—penalty £100. (*Income Tax Act, 1842, s. 38.*)

Auctioneers in Scotland not giving notice of sale—penalty £50.—See **Scotland**, page 322. (*Taxes Management Act, 1880, s. 97 (10).*)

PRIVILEGE—

Commissioners are entitled to exemption from parish and ward offices. (*Income Tax Act, 1842, s. 35.*)

Commissioners (general and additional) are discharged from serving on juries in the county where they dwell. (*Taxes Management Act, 1880, s. 40.*)

Commissioners, collector, officer, or person employed under the commissioners in relation to inland revenue, shall not be compelled to serve as mayor, sheriff, or in other parochial offices or employment, or on any jury, or inquest, or in the militia. (*Inland Revenue Regulation Act, 1890, s. 8.*)

PROCEEDINGS—

Officers.—No commissioner, sheriff, etc., clerk, surveyor, assessor or collector shall be liable by reason of the execution of the Tax Acts to any penalty other than those contained therein. (*Taxes Management Act, 1880, s. 19 (1).*)

Every action against a collector shall be defended by the commissioners. (*s. 20 (7).*)

Costs shall be defrayed by assessment on the parish. (*s. 20 (8).*)

The provisions of the Taxes Management Act, 1880, shall not affect any prosecution on indictment or criminal letters for any felony or misdemeanour, provided that no person shall be proceeded against twice in respect of the same offence. (*Revenue Act, 1889, s. 14 (1).*)

A collector shall, for the purpose of any indictment for felony, etc.;

¹ Refers also to House Duty.

PROCEEDINGS—*contd.*

committed by him as collector, be deemed to be employed in the public service of Her Majesty, and to be a clerk, officer or servant of the commissioners of inland revenue. (s. 14 (2).)

Collector's Bonds.—On the trial of an action against the sureties of a collector, the production of an account in the collector's handwriting or signed by him of any sum collected or received shall be sufficient proof of the receipt of such sum. (*Taxes Management Act*, 1880, s. 119 (1).)

A schedule delivered upon oath by the collector, purporting to contain the names of defaulters, shall be sufficient evidence to charge the collector and his sureties with all other sums comprised in his duplicates. (s. 119 (2).)

Any costs given against the commissioners, without their wilful neglect or default, shall be recovered by re-assessment on the parish. (s. 120).

High Court.—Any duties may be sued for and recovered, with costs, in the High Court, as a debt due to the Crown, or by any other means whereby a debt of record or otherwise may be recovered. (s. 111 (1).)

A schedule of arrears certified to the High Court, or a schedule of defaulters, shall be sufficient evidence of debt, and of the sum mentioned. (s. 111 (2) and (3).)

Penalties which under this section are recoverable in the High Court shall be sued for by information in the name of the Attorney-General for England, and in Scotland in the name of the Lord-Advocate, and in Ireland in the name of the Attorney-General for Ireland, and may be received with full costs of suit. (s. 21 (1).)

All penalties exceeding £20 under the Tax Acts or Land Tax Acts (except such as are directed to be added to the assessments) shall be recoverable in the High Court. (s. 21 (3).)

Any writ or subpoena or other process issued out of the High Court may be served on any person in any part of the United Kingdom. (*Inland Revenue Regulation Act*, 1890, s. 23 (1).)

If any person so served does not appear, the High Court may, on proof of service, transmit a certificate of default to the High Court in that part of the United Kingdom in which the writ or process was served, which Court shall proceed against and punish the defaulter. (s. 23 (2).)

PROCEEDINGS—*contd.*

Where the writ or process served is to give evidence, a person shall not be punished for failure to appear unless it is shown that a reasonable sum of money for expenses had been tendered to him before the default. (s. 23 (3).)

Any fine or penalty may be sued for and recovered in the High Court. (s. 22 (1).)

General and Land Tax Commissioners.—All penalties not exceeding £20, and such penalties exceeding £20 as are directed to be added to assessments, shall be recoverable before the commissioners (land tax and general, respectively), where the offence was committed. (*Taxes Management Act*, 1880, s. 21 (5).)

Commissioners shall take cognizance of any offence by information in writing, and shall summon the offender; they shall examine the matter and determine it in a summary way, and on proof shall give judgment for the penalty or for such part thereof as they shall think proper to mitigate the same to and shall assess the penalty by supplementary assessment. The commissioners' adjudication shall be final and not removable by any process in any court of law or equity. (*Taxes Management Act*, 1880, s. 21 (6).)

All moneys so arising shall be paid to the Revenue. (s. 21 (7).)

Evidence.—All regulations, minutes and notices purporting to be signed by a secretary or assistant secretary of the commissioners of inland revenue, and by their order, shall, until the contrary is proved, be deemed to have been signed, etc., by the commissioners. (*Inland Revenue Regulation Act*, 1890, s. 24 (1).)

The letter or instructions under which a collector or officer or person employed in relation to inland revenue has acted shall be sufficient evidence of an order issued by the Treasury or by the commissioners of inland revenue and referred to therein. (s. 24 (2).)

Evidence of a person being reputed to be or having acted as a commissioner, collector, officer or person employed in relation to inland revenue shall, unless the contrary is proved, be sufficient evidence of his appointment or authority to act as such. (s. 24 (3), also *Income Tax Act*, 1842, s. 182.)

Time Limit.—Proceedings for the recovery of any fine or penalty under the Income Tax Acts may be commenced within the three years next after the fine or penalty is incurred. (*Finance Act*, 1907, s. 23 (1).)

PROCEEDINGS—*contd.*

General.—All proceedings must be by order of the Board, and in the name of an officer, or in England in the name of the Attorney-General, in Scotland in the name of the Lord-Advocate, and in Ireland in the name of the Attorney-General for Ireland. (*Inland Revenue Regulation Act*, 1890, s. 21 (1).)

This section shall not extend to summary proceedings for conviction on immediate arrest. (s. 21 (2).)

The power of the Board to hear and determine information for the recovery of any fine or penalty shall cease, and any information shall be determined before a court of summary jurisdiction, subject to appeal. (s. 21 (3).)

Any officer or person employed or authorised by the Board or solicitor of inland revenue may, although he is not a solicitor, advocate, or writer to the signet, prosecute, conduct or defend any information, complaint or other proceeding to be heard or determined by any justice of the peace in the United Kingdom, or by any sheriff in Scotland in relation to inland revenue. (s. 27.)

Any person who has been admitted as a solicitor and is authorised by the Board or solicitor of inland revenue may appear in, conduct, defend and address the court in any legal proceeding in a county court in relation to inland revenue. (*Finance Act*, 1896, s. 38.)

Mitigation.—Board may mitigate any fine or penalty relating to inland revenue, or stay or compound any proceedings for the recovery thereof, and may, after judgment, further remit or entirely remit any such fine or penalty and order any person imprisoned for any offence against inland revenue to be discharged before the term of his imprisonment has expired. (*Inland Revenue Regulation Act*, 1890, s. 35 (1).)

The Treasury may mitigate or remit any such fine or penalty either before or after judgment, and may direct the return of anything seized. (s. 35 (2).)

Costs.—Pecuniary penalties may be recovered as in 48 Geo. III, c. 99 and c. 150, and with full costs of suit and all charges and expenses attending the same. (*Income Tax Act*, 1842, s. 185.)

All fines, penalties and forfeitures not otherwise legally appropriated, shall be applied to the use of Her Majesty, and (as also all costs, charges and expenses payable in respect thereof) paid to the

PROCEEDINGS—*contd.*

Board as they direct. (*Inland Revenue Regulation Act, 1890, s. 33.*)

Attorney-General v. Corporation of Exeter (High Court of Justice, 1911).

It was held that a fine imposed by the Justices of Exeter, under the Inland Revenue Regulation Act, 1890, s. 11, is required, under s. 33, to be paid to the Commissioners of Inland Revenue, and may not be retained by the Corporation under its Charters.

All costs, etc., payable by the Board in respect of proceedings and all rewards shall be deemed charges of collection and management. (s. 34.)

Cost of High Court Cases—see under **High Court Cases**, page 77.

Constables.—All constables and peace officers shall assist in the execution of the Act, and shall obey the precept and warrant directed to them in that behalf by the commissioners. (*Taxes Management Act, 1880, s. 22.*)

Rewards.—Commissioners of Inland Revenue may reward informers. Treasury consent is required to any reward exceeding £50. (*Inland Revenue Regulation Act, 1890, s. 32.*)

Increased Rate of Duty, etc.—Increased rate of duty imposed as penalty or as part of or in addition to penalty, may be added to the assessment and be collected and levied in like manner as any duties included in the assessment. (*Income Tax Act, 1842, s. 185.*)

Petition of Right does not lie to obtain repayment—see *Holborn Viaduct Land Co. v. Queen*, under **Assessments-Appeals**, page 28.

See also under **Affidavits and Oaths**.

RAILWAYS—

Profits.—The annual value shall be understood to be the full amount for one year of the profits received therefrom in the year preceding. (*Income Tax Act, 1842, s. 60 Schedule A, No. III, Rule 3.*)

Duty shall be charged where the accounts are made up. (*Income Tax Act, 1842, s. 60, No. IV. Rule 1.*)

Assessment shall be made by special commissioners, who shall notify the assessment to the secretary of the railway company. (*Income Tax Act, 1860, s. 5.*)

RAILWAYS—*contd.*

Profits shall be charged and assessed by the special commissioners according to the Rules of Schedule D, so far as such Rules are consistent with No. III. Schedule A. (*Revenue Act, 1866, s. 8.*)

Railway companies in England and Ireland shall pay the duties under Schedule D, by four quarterly payments on or before June 20th, September 20th, December 20th, and March 20th. (*Taxes Management Act, 1880, s. 95.*)

Highland Railway Co. v. Special Commissioners of Income Tax (Court of Exchequer, Scotland, 1885).

The Company made a loss on its steamship service, which was therefore discontinued. It was held that the discontinuance of this branch of its business should not affect the normal basis of assessment, *i.e.*, the net profits of the whole of the Company's undertakings in the year preceding the year of assessment. *Lord President.*—"It was contended that the undertaking for the proper year of assessment was no longer an undertaking consisting partly of sea carriage and partly of land carriage, and, therefore, that it is the profits of that limited undertaking, abstracting the sea carriage altogether, that is to form the subject of assessment and consequently that neither profit nor loss on the abandoned part of the business can be taken into account. I think that proceeds upon a misunderstanding of the position of the Highland Railway Company. They were authorised by statute to engage in this business of sea-carrying. From the time they engaged in that business it became a proper part of their undertaking. It was part of the business of the company, and their property was embarked in that business, and their shareholders bore the profit and loss of that business just as much as of any other part. Therefore if a portion of the Company's business becomes unprofitable and is dropped either permanently or for a time, the effect of that is not to make the undertaking of the Company something different from what it was. They may resume that traffic if they think fit, they may discontinue it if they do not

RAILWAYS—*contd.*

find it paying ; but the undertaking of the Company, the business of the Company, remains exactly what it was."

Employees.—Special commissioners shall assess the duties payable in respect of persons holding an office or employment of profit under a railway company. (*Income Tax Act, 1860, s. 6.*)

The assessment shall be deemed to be and shall be an assessment on the company. (s. 6.)

The Secretary may retain the duties out of salaries. (s. 6.)

Engine Drivers, etc.—See page 314.

REMUNERATION—

Assessors and collectors shall have 3d. in the pound of moneys paid over, to be divided equally between the assessors and collectors (but not on moneys paid into the Bank of England, etc.).

No person other than a clerk or clerk's assistant shall receive money payable to such clerk. (*Income Tax Act, 1842, s. 183.*)

Treasury may assign by minute to be laid before Parliament remuneration as they think expedient to any assessor, collector or clerk in public departments. (*Income Tax (Public Offices) Act, 1872, s. 1 (1).*)

¹ When the allowance granted to an assessor or collector of income tax and inhabited house duty, together with the allowance under the Land Tax Acts, exceeds the sum considered by the general commissioners to be fair remuneration, the commissioners shall have power to fix the amount. In no case shall the aggregate amount exceed £1,000, exclusive of necessary office expenses. (*Customs and Inland Revenue Act, 1885, s. 25.*)

Commissioners of inland revenue, with Treasury consent, may grant to the clerk to commissioners such sums for expenses incurred other than necessary office expenses, and by way of additional remuneration, as they deem expedient. (*Revenue Act, 1889, s. 13.*)

Clerk to commissioners shall receive not less than the amount paid as poundage in 1890-1, and not less than the average allowance for expenses in 1888-9, 1889-90, 1890-1. (*Taxes (Regulation of Remuneration) Act, 1891, s. 2.*)

¹ Assessor of income tax and inhabited house duty shall receive

(a) for Schedules D and E—the same (now "not less than the"—*Finance Act, 1908, s. 8*) amount as paid in 1890-1,

¹ Refers also to House Duty.

REMUNERATION—*contd.*

(b) in any year in which he acts as assessor for Schedule A and B, the same as 1888-9.

Apportionment is allowed on any change in area. (*Taxes (Regulation of Remuneration) Act, 1891, s. 3.*)

¹ Collector of income tax and inhabited house duty shall receive not less than the remuneration of 1890-1, as the Board and Treasury direct; apportionment by commissioners for the district shall be allowed on any change in collectors. (s. 4.)

Nothing in the Act of 1891 shall affect the provisions of the Customs and Inland Revenue Act, 1885, s. 25. (*Taxes (Regulation of Remuneration) Act, 1891, s. 5.*)

Land Tax.—The clerk to the commissioners and the collector shall receive a sum not less than the poundage for 1890-1. (*Taxes (Regulation of Remuneration) Amendment Act, 1892, s. 1.*)

REPAYMENT—

Time limit.—No claim for repayment of duty shall be allowed unless it shall be made within three years next after the end of the year of assessment to which the claim shall relate. (*Income Tax Act, 1860, s. 10.*)

Application for repayment of duty on amendment of assessment under Schedule D on the grounds of cessation, death, bankruptcy or loss by specific cause, to be made to the commissioners within three calendar months after the end of the year of assessment. (See page 31.) (*Income Tax Act, 1842, s. 134.*)

Repayment of duty on proof of loss—notice to be given to the surveyor within six months after the year of assessment. (See page 30.) (*Customs and Inland Revenue Act, 1890, s. 23 (1).*)

Repayment of duty on lost rent in Ireland—notice to be given to the special commissioners within six months of the expiration of the year of assessment. (See page 117.) (*Income Tax Act, 1853, s. 18.*)

Foreign residents owning foreign securities payable in the United Kingdom—repayment claims shall be made within six months of the end of the year of charge.¹ (See page 294.) (*Finance (1909-10) Act, s. 71 (2).*) Time limit extended to three years. (*Finance Act, 1914, s. 11.*)

Depreciation allowance to the lessor of machinery—repayment

¹ Refers also to House Duty.

REPAYMENT—*contd.*

to be claimed within twelve months of the year of assessment. (See page 64.) (*Customs and Inland Revenue Act, 1878, s. 12.*)

RETURNS—

Note.—A return is commonly described in the Income Tax Acts as a "statement."

Definition.—"Return" includes any list, statement, declaration, account, schedule or estimate in writing by whomsoever made, or from whomsoever required in conformity with the directions of the Tax Acts. (*Taxes Management Act, 1880, s. 5.*)

Notices requiring Returns.—See pages 15 and 16.

LODGERS AND EMPLOYEES.

Every person when required so to do by any notice under this Act shall, within the period to be mentioned in such notice, prepare and deliver a list in writing containing, to the best of his belief, the proper name of every lodger or inmate resident in his dwelling-house, and of other persons chiefly employed in his service whether resident in such dwelling-house or not, and the place of residence of such of them as are not so resident, and also of any such lodger or inmate who shall be desirous of being assessed at his ordinary place of residence. A penalty shall not be imposed on any person for omitting any person in his service or employ not resident in his dwelling-house, who is entitled to be exempted. (*Income Tax Act, 1842, s. 50.*)

Every employer, when so required by notice from an assessor, shall within the time limited therein, prepare and deliver to the assessor a return of the names and places of residence of any persons employed by him (except those who are not employed in any other employment and whose remuneration for the year does not exceed the limit for total exemption), and of the payments made to them in respect of that employment. (*Finance Act, 1907, s. 21 (1).*)

Where the employer is a body of persons, corporate, or unincorporate (including a company), the secretary of the body, or other officer (by whatever name called) performing the duties of secretary, shall be deemed to be the employer for the purposes of this provision; and any director of a company or person engaged in

RETURNS—*contd.*

the management thereof shall be deemed to be a person employed. (*Finance Act, 1907, s. 21 (2).*)

PROFITS.

Every person chargeable, where required so to do, whether by any general or particular notice, within the period to be mentioned in the notice shall prepare and deliver to the person appointed to receive the same a true and correct statement in writing in the required form, signed by the person delivering the same, containing the annual value of all lands and tenements in his occupation whether situate in one or more parish or parishes, and the amount of the profits or gains arising to such person from all and every the sources chargeable under this Act,—to which shall be added a declaration that the same is estimated on all the sources contained in the several schedules describing the same.

Every such statement shall be exclusive of the profits and gains, accrued or accruing from interest of money or other annual payment arising out of the property, of any other person for which such other person ought to be charged. (*Income Tax Act, 1842, s. 52.*)

See under *Attorney-General v. Till*, page 130, as to what the above section requires.

No person on whom the assessor has not served a particular notice shall be liable to penalties for not delivering a statement, if it shall appear to the commissioners that he is exempt. (s. 56.)

But now see *Finance Act, 1907, s. 22*, page 132.

Any person required to make a return from his residence shall at the same time deliver a declaration stating where he is chargeable and whether he is engaged in any trade, profession, etc., if so, stating where and whether it is carried on wholly or partly out of the United Kingdom. (*Income Tax Act, 1842, s. 106.*)

Persons having more than one residence, or carrying on trade, etc., in different places, or in any place different from their ordinary residence shall, if required, deliver like returns in each parish, as are required in the parish where they ought to be charged. They shall not be liable to a double charge.

Returns under Schedule D may be delivered sealed up, if superscribed with the name and place of abode, or place of business, of the person making them. (*Income Tax Act, 1842, s. 110.*)

RETURNS—contd.

See page 151 as to returns by partners.

See page 8 as to returns by agents, trustees, guardians, etc.

Penalties.—See pages 130 and 133.

Amended or late return.—See *Income Tax Act*, 1842, s. 28, page 129.

Procedure with regard to Returns.—See pages 15 to 19.

Place of Residence.—See *Attorney-General v. McLean*, page 15.

Secrecy of Returns, etc.

Brown's Trustees v. Hay (Court of Session, Scotland, 1897).

It was held that a claim of privilege may be supported against the production in a court of law of official documents coming from third parties, if the public interest would thereby be prejudicially affected by the discouragement of similar communications being made in future.

In re Joseph Hargreaves, Ltd. (Court of Appeal, 1900).

The court declined to order, under Section 115 of the Companies Act, 1862, the production of documents (copies of certain Balance Sheets) when the Board of Inland Revenue declared, by affidavit of its secretary, that such production would be against the public interest.

Shaw v. Kay (Court of Session, Scotland, 1904).

The court declined to order the production of confidential returns asked for with a view to proving a person's ability to pay a debt. *Lord Pearson*.—"There is in this connection a cardinal distinction between income tax receipts and income tax returns. The receipts are the party's own vouchers, and, so far as regards the receipts for income tax proper, payable under Schedule D, they are for the total sum, and do not enter into particulars. In some cases the Court have refused to allow recovery even of income tax receipts. But I think the more recent cases show more willingness to allow it."

FORMS OF RETURNS REQUIRED.

By Income Tax Act, 1842, Schedule G (Section 190), returns are required as follows—

RETURNS—*contd.*

I. By every occupier of lands, tenements, hereditaments, or heritages throughout Great Britain, to be charged under Schedules (A) and (B), or either of them,

A statement of the rent and annual value, or the annual value, as the case shall require, of all lands, tenements, and hereditaments, or heritages, occupied in every parish or place, distinguishing the proportions in each parish or place, and estimating separately such as are occupied as owner or tenant, and also such as are held under different landlords, and also such as are chargeable by the rent or annual value, or on the amount of profits; and also estimating separately the rent or annual value chargeable in respect of the property, and the amount chargeable in respect of the occupation, distinguishing the same, as follows; (*videlicet*)

Lands and tenements occupied as owner :

Lands and tenements let at rack-rent within seven years :

Lands and tenements let at rack-rent before the period of seven years, with the rent and annual value thereof estimated separately :

Lands and tenements let, but not at rack-rent, with the rent and annual value thereof estimated separately :

The amount at which such lands and tenements are rated to the poor :

The amount of the composition, rent, rent-charge, or annual payment paid in the preceding year to the rector or vicar or other person, for tithes of the above lands and tenements :

The amount of each deduction claimed in respect thereof, and stating if tithe-free in part or in the whole, and the amount of any modus for tithes or real composition.

II. By every lay impropiator, and by every ecclesiastical rector, vicar, or other person (describing himself) receiving any tithes in kind, or any payments in right of the Church, or by endowment, or in lieu of any tithes, and on all teinds in Scotland, to be charged under Schedule (A), distinguishing the same as follows :

The amount of the profits from tithes taken in kind for one year, on an average of three years.

The amount of dues and money payments in right of the Church, or by endowment, or in lieu of tithes not arising from lands, on the above average.

RETURNS—*contd.*

The amount of compositions, rents, and payments in lieu of tithes, arising from lands for the preceding year.

III. By every person, corporation, or company carrying on any concern hereinafter mentioned, or their agents or officers, in the cases authorised to be charged under Schedule (A), showing :

The amount of profits from quarries of stone, slate, limestone, or chalk, in the preceding year :

Of ironworks, salt springs or works, alum mines or works, waterworks, streams of water, canals, inland navigations, docks, drains, levels, fishings, rights of markets and fairs, tolls, railways and other ways, bridges and ferries, in the preceding year :

Of mines of coal, tin, lead, copper, mundic, iron, and other mines, on an average of five years.

IV. By every Lord or Lady of a manor or other royalty, or tenant of the same,

The amount of all dues and other services or other casual profits (except rents and annual payments) of such manors or royalties, on an average of seven years.

V. By the receiver of any fine paid in consideration of a demise of lands or tenements (except customary) to be charged under Schedule (A.),

The amount of such fines in the preceding year, or for such lesser period since the interest thereon commenced, and an estimate of the average value for one year.

VI. By every person entitled to profits arising from lands, tenements, hereditaments, or heritages, not before stated to be charged under Schedule (A.),

The amount, on a fair average, to be allowed by the respective commissioners.

VII. By or for every person carrying on any trade, manufacture, adventure, or concern in the nature of trade, to be charged under Schedule (D),

The amount of the balance of the profits thereof, upon a fair and just average of three years, or for such shorter period as the concern has been carried on.

VIII. By every person exercising any profession, employment, or vocation to be charged under Schedule (D),

RETURNS—*contd.*

The amount of the balance of the profits, gains, and emoluments thereof within the preceding year (*now on three years' average*).

IX. By every person entitled to profits of an uncertain value, not before stated, to be charged under Schedule (D),

The full amount of the profits or gains arising therefrom within the preceding year.

X. By every person receiving in Great Britain interest from securities out of Great Britain, to be charged under Schedule (D),

The full amount that has been received, or will be received, as far as the same can be computed in the current year.

XI. By every person receiving in Great Britain profits from possessions out of Great Britain, to be charged under Schedule (D.),

The full net amount annually received therefrom, either by remittances, or importation of property, or money or value from property not imported, or on credit, or on account in respect of remittances, property, or value, on an average of the three preceding years.

XII. By every person entitled to any annual profits not falling under any of the foregoing rules, and not charged by any of the other Schedules, to be charged under Schedule (D),

The full amount thereof received annually, or according to the average directed to be taken by the commissioners on a statement of the nature of such profits, and the grounds on which the amount has been computed, and the average taken to the best of the party's knowledge and belief.

XIII. Declarations to be delivered in respect of the duty to be charged under Schedule (D)—.

First.—Declaration by the precedent acting partner, or by the agent, if none of the partners are resident in Great Britain, of the names of the several partners, their respective residences, and the place of carrying on the trade or concern, or exercising the profession, and the style or description of the firm :

Second.—Declaration by any partner, not being the precedent acting partner, of his being assessed with the firm, describing the same, and the place where the return of the precedent partner was made.

Third.—Declaration which may be made by each partner

RETURNS—*contd.*

desirous of being and entitled to be separately assessed, describing the firm, and his proportion of the profits (*now repealed*).

XIV. Statement of profits of any office not chargeable by commissioners specially appointed in the department where the office is held.

The amount of the salary, fees, wages, perquisites, and profits of office in the preceding year, or on an average of three years, as the case shall require.

The like statement to be delivered to the commissioners appointed in the department, if required.

XV. General declaration by each person returning a statement of profits under Schedules (A) (B), (D), or (E),

Declaring the truth thereof, and that the same is fully stated on every description of property or profits included in the Act relating to the said duties, and appertaining to the party, estimated to the best of his judgment and belief, according to the directions and rules of this Act.

XVI. List and declaration for facilitating the execution of the Act in relation to the duties chargeable on others.

First.—List containing the name of every lodger or inmate in any dwelling-house, with the ordinary place of residence of such lodger or inmate, if he shall have any ordinary place of residence elsewhere, at which he is desirous of being assessed :

Second.—List of every person in the service or employ of any master or mistress, whether resident in his or her dwelling-house or not, and the place of residence of those not residing with the master or mistress :

Third.—List to be delivered by every trustee, factor, agent, receiver, guardian, tutor, curator, or committee of the name and place of residence of the person for whom they act in such character, describing him, and the names of them who are joined in trust :

Fourth.—Declaration on whom the property is chargeable in respect of such trust.

Fifth.—List containing the proper description of every corporation, company, fraternity, fellowship, society, or trust for which any person is answerable as treasurer, auditor, or receiver, and where any person before described is answerable for the duty to be charged in respect of the property or profits of others, such lists

RETURNS—*contd.*

as aforesaid shall be delivered, together with required statements of such profits.

XVII. Lists, declarations, and statements of discharge, or in order to obtain exemptions.

First.—Declaration of the amount of value or property or profits returned, or for which the claimant hath been or is liable to be assessed.

Second.—Declaration of the amount of rents, interests, annuities, or other annual payments, for which the party is liable to allow and deduct the duty, with the names of the respective persons by whom such payments are to be made, distinguishing the amount of each payment :

Third.—Declaration of the amount of interest, annuities, or other annual payments, to be made out of the property or profits assessed on the claimant, distinguishing each source :

Fourth.—Statement of the amount of income derived according to the three preceding declarations.

Fifth.—Statement of any payment which the claimant may be liable to make, and out of which he may be entitled to deduct or retain any portion of the duty charged upon him, and of any charge which he may be entitled to make against any other person for any portion of such duty.

SAVINGS BANKS—

Schedule C.—Savings Banks established under the provisions of the Savings Bank Act, 1828, shall be exempted in respect of the stock or dividends arising from investments with the commissioners for the reduction of the National Debt, and also the dividends payable by the Savings Banks on funds therein deposited belonging to any depositor or to any charitable institution. (*Income Tax Act, 1842, s. 88. Schedule C. No. 2.*)

Schedules C and D.—Any penny Savings Bank or other bank for savings, whether certified under the Savings Bank Act, 1863, or not, shall be exempt so far as its funds are applied as interest to any depositor, not exceeding £5 in the year for which exemption is claimed. (*Finance Act, 1894, s. 36 (1).*)

Exemption shall be claimed as in the case of income applicable to charitable purposes. (*s. 36 (2).*)

SAVINGS BANK—*contd.*

Where interest is paid to any person liable to income tax, he shall be assessed under Case 3, Schedule D. (s. 36 (3).)

In re Yorkshire Penny Bank (High Court of Justice, 1889).

A penny bank claimed repayment of tax deducted from interest on its investments. It obtained a Rule Nisi, which was discharged on the understanding that the special commissioners would grant repayment of the tax applicable to the sums paid to its depositors not entitled to £3 interest per annum.

SCHEDULE OF ARREARS (DEFAULTERS)—

Delivery.—The Schedule shall be delivered by the collector at the receipt, or to the land tax and general commissioners respectively within three days after such receipt, in the prescribed form, with affidavits subscribed (to be made on oath and signed), of the Christian name and surname of each defaulter from whom he has demanded but not received payment, and of the sums in arrear. (*Taxes Management Act, 1880, s. 103.*)

Proceedings.—It shall remain with the general commissioners for forty days, during which the collector shall give notice of such schedule to the defaulters named. (s. 105 (1).)

The defaulter may pay the arrears during this period and the commissioners shall discharge such arrears from the schedule. (s. 105 (2).)

The commissioners may issue fresh warrants to the collector and use any lawful methods for recovery, or direct the arrears to be levied under the former warrants. (s. 105 (3).)

A warrant may be directed to the collector or other person with authority to levy for arrears and costs, the arrears being paid to the collector of inland revenue and discharged from the schedule. (s. 105 (4).)

The person to whom the warrant is issued shall obey the commissioners. (s. 105 (5).)

On the expiration of forty days a schedule of arrears may be certified to the High Court by the collector of inland revenue, or the general commissioners. (s. 105 (6).)

SCHEDULE OF ARREARS (DEFAULTERS)—*contd.*

When so certified it shall be transmitted to the Board who may, before forwarding it to the High Court, direct the collector to use any legal method of recovery. (s. 106.)

In default of delivery, the collector of inland revenue may certify to the High Court the amount of duties unpaid, with the name of the parish and of the collector. (s. 107 (1).)

Such certificate shall be sufficient authority for the High Court to issue immediate process against the collector. (s. 107 (2).)

The sheriff or other officer shall levy issues at the rate of a shilling in the pound unpaid, and shall pay the sum (less expenses allowed by the Board) to the proper officer of inland revenue. (s. 107 (3).)

The Board, after payment of duties in arrears, may remit such issues in whole or in part, after deducting costs and charges. (s. 107 (4).)

SCHEDULE OF DEFICIENCIES—

Contents.—Collector shall make a return on the prescribed form containing

- (a) names and addresses of persons from whom he could not obtain payment for causes stated in s. 109 (below);
- (b) the particular reason for returning each defaulter;
- (c) particulars of sums charged on defaulters. (*Taxes Management Act, 1880, s. 108 (1).*)

Commissioners, after examination of the collector on oath, shall

- (1) ascertain the sums discharged for cause allowed by the Income Tax Acts, and make therefrom the Schedule of Discharge;
- (2) make Schedules of Defaulters containing
 - (a) particulars of the sums with which the defaulters shall be charged;
 - (b) sums not collected, by collector's neglect, for which he shall be held liable and which should be re-assessed on the parish. (s. 108 (2).)

Commissioners shall cause the particulars to be entered by the clerk in Schedules of discharge and default, and shall affix their hands and seals. (s. 108 (3).)

SCHEDULE OF DEFICIENCIES—*contd.*

Commissioners shall transmit the schedules to the Board, to be deposited at their Head Office. (s. 108 (4).)

Defaulters returned in Schedule of Deficiencies.—Collector shall swear

- (a) that all sums returned are due and wholly unpaid, or,
- (b) that the person became bankrupt before the day on which the duties were payable and had not sufficient goods within the parish for levying, or,
- (c) that such person removed from the parish before the day when the duties were payable without leaving sufficient goods for levying, or,
- (a) that there were not, nor are, any goods of any person liable to the payment of such duties in arrear, whereby the same or any part might be levied. (s. 109.)

SCHEDULES OF ASSESSMENT—ALL SCHEDULES.

For an analysis of the Schedules of Assessment, see page 372.

Provisions of other Schedules.—Every provision applied to duties in any particular schedule, which shall be applicable to the duties in any other schedule, and not repugnant to the provisions for charging, ascertaining and levying the duties in such other schedule, shall be applied to the same as fully and effectually as if the application thereof had been so expressly and particularly directed—any thing herein contained notwithstanding. (*Income Tax Act, 1842, s. 188.*)

Deductions.—It shall not be lawful to make, in any return or assessment, any deductions other than are expressly enumerated in the Tax Acts ;

nor on account of any annual interest, annuity or other annual payment out of *any profits or gains chargeable* (in regard that a proportionate deduction of duty is allowed) ;

nor from *any property, or any office or employment of profit* on account of diminution of capital employed, or of loss sustained in any trade, manufacture, adventure or concern, or in any profession, employment or vocation. (*Income Tax Act, 1842, s. 159.*)

Rates.—Where this or any other Act enacts that income tax shall

SCHEDULES OF ASSESSMENT—ALL SCHEDULES—*contd.*

be charged at any rate in any year, there shall be charged, levied and paid during that year in respect of all property, profits and gains, the tax at that rate for every twenty shillings of the annual value or amount of profits and gains chargeable under *Schedules A, C, D, or E*; and for every twenty shillings of one-third of the annual value of lands, tenements, hereditaments, and heritages chargeable under *Schedule B* in respect of the occupation thereof. (*Finance Act, 1896, s. 26 (1).*)

SCHEDULE A—

See analysis on page 372.

For, and in respect of the property in all lands, tenements, hereditaments, and heritages in the United Kingdom, and to be charged for every twenty shillings of the annual value thereof. (*Income Tax Act, 1853, s. 2.*)

The duties hereby granted and contained in Schedule A shall be assessed and charged under the following rules—

NO. I.—GENERAL RULE.

For estimating Lands, Tenements, Hereditaments, and Heritages mentioned in Schedule A.—The annual value shall be understood to be the *rent* by the year at which the same are let at rack-rent, if the amount of such rent shall have been fixed by agreement within seven years preceding the 5th April before the assessment, but if not so let at rack-rent then at the rack-rent at which the same are worth to be let by the year;

which rule shall extend to all lands, tenements, hereditaments, or heritages *capable of actual occupation*, of whatever nature and for whatever purpose occupied or enjoyed; and of whatever value, except the properties mentioned in No. II and No. III of this Schedule. (*Income Tax Act, 1842, s. 60.*)

Annual Value.

Edmonds v. Eastwood (High Court of Justice, 1858).

A brickfield was leased at a surface rent of £17 10s., a royalty of £100, and an additional brick rent of two shillings per thousand for every thousand bricks over a

SCHEDULE A (No. I)—*contd.*

certain number. It was held that all three payments were rent, and that tax was chargeable on the whole.

Campbell v. Inland Revenue (Court of Exchequer, Scotland, 1879).

It was held that an assessment under Schedule A should include the rent paid for assessable subjects only, and not that in respect of movable subjects included in the lease. (The lease in question included such subjects as coaches and horses.)

Lord President.—"There is no doubt the Income Tax Act and Inhabited House Duty Act prescribe that where there is an existing lease by which the subjects are let at rack-rent, that is to be taken as the annual value of the assessable sum. But if upon the face of the agreement it clearly appears that what is called rent is payable, in part at least, for something that is not an assessable object, the clauses of these Acts do not apply . . . The commissioners were entitled and bound, in the circumstances, to enquire how much of this £1,000 a year was payable in respect of heritable and assessable subjects."

Compare the three rating cases which follow.

Laing v. Overseers of Bishopwearmouth (High Court of Justice, 1878).

It was held that, in determining the annual value of premises for rating purposes, the following machinery should be taken into consideration, viz., boilers set in masonry with pipes passing through the buildings and underground; engines standing on iron bed plates bolted to stone foundations; shafts fastened to the walls; machines separate from each other, some being bolted to concrete foundations and others simply resting on prepared beds. Some of the machinery and plant could be moved without injury, but all was used for the purposes of the business of the owner and occupier of the premises. *Cockburn, C. J.*—"The whole (of the machinery) is essentially necessary to the shipbuilding business to

SCHEDULE A (No. I)—*contd.*

which the appellant's premises are devoted, and must be taken to be intended to remain permanently attached to them, so long as these premises are applied to their present use."

Tyne Boiler Works v. Overseers of Longbenton and the Assessment Committee of the Tynemouth Union
(*Court of Appeal*, 1886).

The tenants of certain boiler works installed therein machinery of a heavy character, including an engine, a boiler, shafting and travelling cranes. Such machines were mainly separate and distinct from each other, some being attached to the ground and others resting there by their own weight or on prepared foundations. It was held that such machinery should be taken into consideration in estimating the rateable value of the premises. *Esher, M.R.*—"Of course it is not all things on the premises, or that are used on the premises, which are to be taken into account; but things which are there for the purpose of making and which do make them fit as premises for the particular purposes for which they are used. It seems to me that when things are brought into that category, they would pass by a demise of the premises as such as between landlord and tenant." *Lopes, L.J.*—"It is clear that personal property such as machinery is *per se*, not rateable, but, if attached so as to be either a landlord's or a tenant's fixture, or a trade fixture, it is equally clear that it is rateable as increasing the value of the premises, and the rent which a tenant from year to year might give for them. But then there are things which, though they may not be physically attached, or may be removable without damage to themselves or the freehold, are so placed on the premises, and so essential to their use for the purpose for which they are used, and so much intended to be used with them for that purpose, that they have practically become for the time being part of the premises. I am of opinion that they must be taken into account in estimating the rateable value of the premises."

SCHEDULE A (No. I)—contd.*Gifford, Fox and Co. v. Overseers of Chard**Boden and Co. v. Overseers of Chard**(Court of Appeal, 1886).*

Certain premises were rated at £1,095, of which £295 was in respect of the land, building and fixed motive power, and £800 for machinery. The machinery in question consisted of bobbinet machines, being frameworks fixed to the floor so as to steady them, but not so fixed as to be made part of the buildings. They might be removed, but were necessary for the use of the premises as a bobbinet lace factory. The poor rate assessment was sustained. *Esher, M.R.*—"It is a question as to enhancing the value of the premises by reason of machinery. . . . Things like sewing machines, not necessary to the use of the premises, were not to be taken as enhancing the value of the premises, but machines, whether fixed to the floor or not, if necessary to the use of the premises as such, and going to make up the value for which the rent was paid, might be taken into account in estimating the rateable value."

Stocks v. Sulley (Court of Exchequer, Scotland, 1899).

A lease of property was granted by a mother to her son. It was held that the commissioners were right in refusing to accept the lease as conclusive evidence of the annual value of the premises. *Lord President.*—"The commissioners were not entitled to disregard the lease but were entitled to make the assessment according to the best of their judgment." *Lord McLaren.*—"It is only in case it is a lease for rack-rent that it is to be accepted as conclusive if within the seven years. I don't know how the facts stand, but it is maintained that this is not a lease for rack-rent, and that, of course, would have to be considered when occasion arose." (NOTE.—In this case the lease was more than seven years old, but Lord McLaren's judgment would hold even if this were not so.)

Walker v. Brisley (High Court of Justice, 1900).

It was held that, for purposes of an assessment under Schedule A, the Commissioners are not bound by the

SCHEDULE A (No. I)—*contd.*

gross annual value of property as stated in the Poor Rate. *Phillimore, J.*—"Where, as in this case, there is no poor rate assessed on the full annual value of the property, the Crown is not driven to look to the poor rate as the sole canon of assessment."

Capable of Actual Occupation.

Ystradyfodwg and Pontypridd Main Sewerage Board v. Bensted (House of Lords, 1907).

It was held that income tax is payable on the full annual value under Schedule A, No. I, of a Sewer in respect of which rates are payable. The Board received rents from various bodies for the use of the sewer, but had no other income and the balance of the expenditure was paid out of local rates. The contention that it should be regarded as falling within Schedule A, No. III (in which case there would be no profits to assess), was rejected. *Earl of Halsbury*.—"In an ordinary sense there might be some difficulty in saying what are 'profits,' but really it seems to me every part of the argument here has been covered by authority. In the first place it is clear there is an occupation, and in the next place it is clear that there is a beneficial occupation."

See also *Lord McLaren* in *Harris v. Edinburgh Corporation* (1907). "In the case of *Ystradyfodwg Sewerage Board*, the learned judge considered it to be perfectly clear that the mode of assessment could not be applied to undertakings that were not established or carried on with a view to profit."

Harris v. Edinburgh Corporation (Court of Exchequer, Scotland, 1907).

It was held that tax is payable on the full annual value under Schedule A, No. I, of certain public slaughter-houses. Rents and dues are charged to meet the expenses thereof and an annuity of £1,000 is payable in respect of the cost of their erection. No surplus is permitted. *Lord McLaren*.—"If these slaughter-houses are not carried on with a view to profit, and no profit in

SCHEDULE A (No. I)—*contd.*

any sense is made, the provisions of Schedule A, No. III, are inapplicable. . . . The result of excluding No. III is to put the subject into the category of property in the natural occupation of its owner who is not using it as a profit-yielding investment, and it is thus chargeable according to the General Rule No. I of Schedule A upon the rent at which it is worth to be let by the year."

Tithe Rent Charges.—Rent charge under the Act for the commutation of tithes, or any other rent charge in lieu of tithe:—Commissioners may on receipt of a return from the owner thereof, charge and assess him therefor, deducting from the assessment the amount of the parochial rates, taxes and assessments charged in the preceding year; where such assessment is made, the amount of such rent charge shall be deducted in assessing the property on which it is charged. (*Income Tax Act, 1853, s. 32.*)

Stevens v. Bishop (Court of Appeal, 1888).

The costs of collecting a tithe rent charge may be deducted from an assessment thereon under the Income Tax Act, 1853, s. 32. *Fry, L. J.*—"I am of opinion that, under the statute of 1842, tithe rent charge was not a hereditament charged under Rule No. I of Schedule A as a separate hereditament, but that it was assessed as part of the annual value of the lands, and was (under No. 4 of Rule IV) assessable either on the occupier of the land or on the person liable to pay the rent-charge; that is, to speak popularly, on either the farmer or the landlord; that it could not be assessed on the rector or vicar, and that it was assessed on the gross amount of the rent-charge. This was altered by statute of 1853 to this extent, that the commissioners were authorised to assess the rent-charge on the rector or vicar under Schedule A. For the first time then the rent-charge is treated as a separate and independent hereditament, chargeable as such under Schedule A on the occupant, or *quasi* occupant, of the hereditament, that is on the rector or vicar; and if it be so chargeable, it appears to me that annual value can be ascertained only in the way pointed out by the general

SCHEDULE A (No. I)—*contd.*

rule (No. I), that is, by treating the annual value as equal to the annual rent when the property was let at rack-rent, and, if not, then at the rack-rent at which the same was worth to let by the year." *Esher, M.R.*—"Here is a statement in the case, that the amount could not be realised without the expense of this collection which is deducted—*could not be* possibly. If that is so I cannot have a doubt that in fixing the rack-rent for such a property, so situated, or so circumstanced, that no tenant would take it except by first deducting the cost of such a collection as that, without which collection he never could get anything as an annual value." See page 179 for Schedule A, No. IV, Rule 4, referred to above.

See also *Pollock, B., in Norfolk v. Lamarque*. "The main ground of the decision is that the Crown admitted that the £12 was an amount which the Rev. Dr. Stevens was compelled to expend in order to realise his tithe."

NO. II.—Rules for estimating the Lands, Tenements, Hereditaments and Heritages herein mentioned which are not to be charged according to the preceding general rule.—The annual value of all the properties hereinafter described shall be the full amount for one year, or the average amount for one year, of the profits received therefrom within the respective time herein limited. (*Income Tax Act, 1842, s. 60.*)

First.—Of all tithes, if taken in kind, on an average of the three preceding years.

Second.—Of all dues and money payments in right of the Church, or by endowment, or in lieu of tithes not arising from lands, and of teinds in Scotland, on an average of three preceding years.

Third.—Of all tithes arising from land, if compounded for, and of all rents and other money payments in lieu of such tithes (except rent charges confirmed under the Act for the commutation of tithes¹) on the amount for one year preceding.

The duty shall be charged on the person entitled thereto or his lessor or tenant, agent, or factor, except in cases mentioned in No. IV, Rule 4.

¹ For which see No. I, page 162.

SCHEDULE A (No. II)—*contd.*

Fourth.—Of manors and other royalties, including all dues and other sources or other casual profits (not being rents or other annual payments reserved or charged), on an average of seven preceding years. The duty shall be charged on the lord of the manor or royalty, or on the person renting the same.

Duke of Norfolk v. Lamarque (High Court of Justice, 1890).

It was held that no allowance may be made from an assessment on manorial dues in respect of the costs of collection. *Pollock, B.*—"This clearly comes under No. II . . . this is to be treated exactly as if it were a rent issuing out of property which belonged to the lord in fee-simple."

Fifth.—Of all fines received in consideration of any demise of lands or tenements (not being parcel of a manor or royalty), on the amount received within the year preceding; provided that where the party shall prove to the general commissioners that such fines, or any part thereof, have been applied as productive capital on which a profit has arisen, or will arise, chargeable under this Act for the year in which the assessment shall be made, the commissioners may discharge the amount so applied from profits.

Lord Mostyn v. London (High Court of Justice, 1895).

It was held that "applied as productive capital" within the meaning of Schedule A, No. II, Rule 5 does not include placing the amount on deposit at a bank for interest. *Wright, J.*—"The section means, by the word *applied*, something more than a temporary deposit. The word *capital* itself rather points to something which is to be in its application a source of income not merely by way of loan. I think that those words, read fairly, imply something more than a mere temporary deposit at a bank."

See *Attorney-General v. Scott*, page 174, *re* renewal fees.

Sixth.—Of all other profits from lands, tenements, hereditaments, or heritages, not in the actual possession or occupation of the person to be charged and not before enumerated,—on a fair and just average of such number of years as the commissioners, on a statement by the

SCHEDULE A (No. II)—contd.

person assessable, shall judge proper (except profits liable to deduction under No. IV, Rules 9 and 10). The duties shall be charged on the receivers of or the persons entitled to the profits.

See dicta in *Hill v. Gregory*, page 166.

NO. III.—Rules for estimating the Lands, Tenements, Hereditaments or Heritages, etc., hereinafter mentioned not to be charged according to the preceding general rule.—The annual value of all properties hereinafter mentioned shall be understood to be the full amount for one year, or average amount for one year, of the profits received therefrom within the respective times herein limited.

See page 177 for other rules of charge.

First.—Of *quarries* of stone, slate, limestone or chalk, on the amount of profits in the preceding year.

Jones v. The Cwmorthin Slate Co. (Court of Appeal, 1879).

It was held that works for getting slate are quarries and do not become mines by reason of being carried on underground. *Brett, L.J.*—"This statute is imposing a tax upon that which is worked and not upon the mode of working it."

Second.—Of *mines* of coal, tin, lead, copper, mundic, iron and other mines, on an average of the five preceding years (subject to other provisions respecting mines).

Mines.

Broughton and Plas Power Coal Co., Ltd. v. Kirkpatrick (High Court of Justice, 1884).

Royalties are paid on a certain mine, but the payments must not be less than a minimum dead rent. In years when the royalties exceed the dead rent the difference may be retained until the payers are recouped for adverse balances in former years when the dead rent exceeded the royalties due and paid. It was held that the mine is assessable on the full profits without deductions equivalent to the sums retained as stated. *Grove, J.*—"These expenses are not part of the necessary working of the concern, but they are a repayment under an agreement between themselves and the landlord, that they shall, when the work becomes

SCHEDULE A (No. III)—*contd.*

profitable, be allowed to recoup themselves the previous losses. The Government have nothing to do with that. The case of the *Coltness Iron Company* (see page 258) in reality holds that they cannot set off that loss against the subsequent profits; and this case is completely governed by that."

Hill v. Gregory (*High Court of Justice*, 1912).

A Colliery paid an annual rent of £60 for the lease of minerals under certain ground (the surface of which was let to a farmer), and deducted tax therefrom. It did not specifically account for such tax to the Revenue, contending that the rent was a payment out of profits brought into charge (*viz.*, by assessments on other lands). No operations touching the property in question had actually been carried out. The lessor was assessed under Schedule A, No. II, Rule 6, in respect of the rent, and appealed against this assessment. It was held that he was rightly assessed as the Colliery was not entitled to deduct tax from the rent. The grounds were (1) that the Colliery did not "occupy" the subject leased; and (2) that the Income Tax Act, 1842, s. 102, and the Customs and Inland Revenue Act, 1888, s. 24 (3) refer only to matters falling under Schedule D, which the rent did not, not being an "annual payment" or "annuity" under the Sections. (1) *Hamilton, J.*—"It appears to me that the facts as found by the commissioners prevent me from saying that in the ordinary sense of the word the Coal Company are occupiers of these minerals at all. There is no finding that they have ever entered upon the subject matter of this demise. Then it is said, nevertheless, though they have never entered upon the minerals, they have in contemplation of law entered upon them by entering on minerals subjacent under land which they own themselves." (After reading Rule 2 of No. IX—see page 194—) "I do not think that those words mean that every person who is entitled by a demise to have the use when he chooses to enter and take that use, is to be deemed the occupier."

SCHEDULE A (No. III)—*contd.*

(2) *Hamilton, J.*—(On the argument that the Colliery was entitled to deduct tax from the rent—) “ It is conceded that the circumstances of the case would not entitle that argument to be rested upon Section 40 (of the Act of 1853—see page 94) or upon Section 60 (of the Act of 1842—see page 179), but it is said that it can be rested either upon Section 102 of the Act of 1842 (see page 83) or upon Section 24 (3) of the Act of 1888 (see page 99). The argument is this : The sum in question is an annuity or other annual payment, it is a sum which is either a reservation out of property or else it is payable as a personal debt or obligation by virtue of a covenant in that deed. . . . It appears to me that the argument upon both these sections involves first of all the consideration whether or not this sum is one which can be brought within the words ‘ annuities or other annual payments ’ or ‘ annuities charged with income tax charged under Schedule D.’ (The Judge held that the sum was within Schedule A, No. II, Rule 6.) . . . The words in Section 102 of the Act of 1842 and Section 24 (3) of the Act of 1888 only apply where the subject matter is chargeable under Schedule D. . . . A payment it is, and it is made annually, but it is not, to my mind, another annual payment comparable to annuities or yearly interest of money, and I do not think it is made so by the words which follow in Section 102—‘ Payable either as a charge on any property or as a reservation thereof or as a personal debt or obligation by virtue of any contract.’ It must still be an annual payment *ejusdem generis* with annuities and yearly interest of money.”

See also cases on pages 94, etc.

[. **Third.**—Of ironworks, gasworks, salt springs or works, alum mines or works, waterworks, streams of water, canals, inland navigations, docks, drains and levels, fishings, rights of market and fairs, tolls, railways and other ways, bridges, ferries and other concerns of like nature, from or arising out of any lands, tenements, hereditaments or heritages, on the profits of the year preceding.

See page 177 for other rules of charge.

SCHEDULE A (No. III)—*contd.***Gas Works.**

In re Glasgow Corporation Gas Commissioners (Court of Exchequer, Scotland, 1876).

It was held that a corporation is (1) liable to assessment in respect of the profits of its gasworks, (2) irrespective of the disposition of the receipts under an Act of Parliament. *Lord President.*—" (1) It is quite optional for any of the inhabitants to buy their gas from the Corporation or not—as they think fit. . . . The Corporation is empowered to enter into a speculation as traders in gas. No doubt it may have been for the benefit of the community but they have all the character and attributes of a trading company. . . . It does not require that profits shall be for the benefit of individuals only in order to make them profits within the meaning of Schedule D of the income tax. *Lord Ardmillan.*—I cannot see any ground for dealing with this Company as other than a Company choosing to sell to those who buy. (2) *Lord President.*—The portion of the revenue which goes into the sinking fund is just a part of the income of the trading corporation, which is used by them for the purpose of paying off their debt."

Clayton v. Newcastle-under-Lyme Corporation (High Court of Justice, 1888).

In the case of certain gasworks in a defective structural condition when purchased, it was held that the sums set aside annually, for the expenditure of future years in restoring the plant and apparatus, are capital payments and may not be deducted from the profits. There was no appearance on behalf of the Corporation.

Dillon v. Corporation of Haverfordwest (High Court of Justice, 1891).

Held that the corporation must not deduct from the profits of supplying private consumers the expense of lighting the public lamps. *Pollock, B.*—"Anything expended upon the supplying of the town was not

SCHEDULE A (No. III)—*contd.*

expended for the purposes of that trade in respect of which they are assessed. . . . (As regards the lighting of the town) they are in no sense traders. There are no vendors and there are no vendees."

Foreign Gasworks are assessable under Schedule D—see *Imperial Continental Gas Association v. Nicholson* under Schedule D—page 214.

Waterworks.

In re Glasgow Corporation Water Commissioners (Court of Exchequer, Scotland, 1875).

Moneys received from a compulsory district water rate are not assessable to income tax. *Lord Ardmillan*.—"Where the area of taxation and the area of distribution exactly correspond, where a rate is raised for a public purpose and the whole of what is collected is applied to that public purpose—there could be no income chargeable with income tax."

See also *Lord President's* comment on this case in *Miller v. Glasgow Corporation Water Commissioners* (1886).—"The Court were of opinion that if this surplus was derived from the amount of rates levied within the limits of compulsory supply it could not be considered as profits or gains of an undertaking. . . . The citizens of Glasgow undertook to assess themselves for accomplishing the important public purpose of supplying the city with pure water. In doing so they had and could have no view of making profit, for that would have been equivalent to paying out of one pocket and into another pocket of the same individual or class."

Miller v. Glasgow Corporation Water Commissioners (Court of Exchequer, Scotland, 1886).

The surplus revenue of the corporation, derived from supplying water beyond the area of compulsory supply and from the sale of water for purposes of trade, is assessable to income tax. *Lord President*.—"There is thus drawn a clear distinction between revenue derived from compulsory

SCHEDULE A (No. III)—*contd.*

rates levied within the municipal boundaries, and that derived from the sale of water for trading purposes and non-compulsory rates levied from persons and properties beyond these boundaries. . . . In so far as the commissioners sell water either by measure, or for a consideration fixed by special agreement, or in return for a non-compulsory rate as the price of water, they are trading in water, and their surplus revenue thus derived is profit or gain within the meaning of Schedule D."

Allan v. Hamilton Waterworks Commissioners (Court of Exchequer, Scotland, 1887).

The profits derived from selling water by meter within the area of compulsory supply are assessable to income tax. *Lord Adam*.—"The representatives of Hamilton Barracks have agreed with the Waterworks Commissioners that they shall be supplied with water on certain terms and conditions. Therefore, it is not compulsory, but it is entirely a voluntary contract between the two parties. . . . I think this is purely the case of a sale of water on terms agreed on, and that distinctly falls under the Glasgow case in my view."

Dublin Corporation v. McAdam (Exchequer Division, Ireland, 1887).

It was held that the surplus receipts of a corporation from supplying water beyond its own area, although paid into a consolidated fund under an Act of Parliament, are liable to income tax. *Palles, C.B.*—"I think it perfectly clear that, in order to bring this case within the operation of the Income Tax Act, it is necessary that there shall be this trading in its strict true sense. There must be at least two parties—one supplying water, and the other to whom it should be supplied and who should pay for it. If these two parties are identical there can be no trading. No man, in my opinion, can trade with himself; he cannot make, in what is its true sense or meaning, taxable profit by dealing with himself. . . . I think the true ground of

SCHEDULE A (No. III)—*contd.*

decision is that the body to pay is a distinct and separate body from the body to receive."

Harris v. Corporation of Irvine (Court of Exchequer, Scotland, 1900).

It was held that the surplus receipts of the Corporation from supplying water to two neighbouring local authorities are assessable to income tax. It is immaterial (1) that the payments made by the local authorities are raised by them by compulsory rates on their inhabitants, and (2) that the Irvine Corporation applies part of the surplus to a sinking fund. *Lord President*.—" (1) The persons who pay and receive the money, and the resulting benefit are not the same persons.

"(2) If the surplus is in the nature of profits it cannot be deprived of that character by its being dedicated and applied to a particular purpose."

Mullingar Rural District Council v. Rowles (High Court of Justice, Ireland, 1912).

The Corporation supply water to those ratepayers who make application therefor, upon whom a special rate is thereon levied. It was held that the surplus realised is assessable. *Palles, C.B.*—" Speaking generally, and leaving special cases out of consideration, the taking of a water supply was to be a voluntary act of the owner of the rateable premises. . . . I consider that it is trading, notwithstanding that there is a limited class who alone are permitted to purchase the water should they so desire, and notwithstanding that the price is one that has been fixed by Parliament or otherwise or that the rate is one that has been fixed by one of the parties only; because the other party need not apply for the water unless he is willing to pay that price. I think that the essence of trading in this sense is buying and selling—that the property in a subject matter passes from one person to another in consideration of a price to be paid by that other. Were both parties identical there could not be a sale."

SCHEDULE A (No. III)—*contd.*

Wakefield Rural District Council v. Hall (Court of Appeal, 1912).

The Council purchases water from a Corporation and supplies it to parishes within its area. The consumers in each parish are required to pay for the supply, except that if a deficiency occurs in any parish it is met by a special rate upon the ratepayers. It was held that the undertaking in each parish should be regarded as a separate concern, and that the Council is assessable (under Schedule A) for the profits in the profit-making parishes without any deduction for losses made in other parishes. *Master of the Rolls*.—"There are no doubt common mains as well as separate mains: but express provision is made for apportioning this common expense. I attach no importance to what has been called the physical unity of supply." . . . (After reading from the case that separate accounts are required by law to be kept for each parish and that the profit or deficiency of one parish may not be diverted to another—"In the face of that paragraph it is very difficult to contend that they are not separate concerns." . . . (As regards Section 101 of the Act of 1842 (see page 269—"Section 101 deals only with cases where profits are chargeable under the rules of Schedule D. Section 8 of the Act of 1866 (see page 177) does not transfer the concerns from Schedule A to Schedule D. It only amplifies the somewhat concise rules contained in Schedule A, No. III, by making the far more elaborate rules prescribed by Schedule D applicable, 'so far as such rules are consistent with No. III.'"

Streams of Water.

In re King's Lynn Harbour Moorings Commissioners (In the Exchequer, England, 1875).

The Harbour Mooring Commissioners were bound by Act of Parliament to apply a certain part of their revenue to the repaying of money expended in the renewal of the works. It was held that this is a proper deduction from the profits assessable,

SCHEDULE A (No. III)—*contd.*

Mersey Docks and Harbour Board v. Lucas (House of Lords, 1883).

It was held that the surplus revenue which by the local Act governing the administration of the Docks must be applied to the reduction of a past debt is assessable to income tax, on the ground (1) that profit is made, and (2) (*Cotton, L. J.*) that *general* terms (in a private Act) are not to be taken to exempt a body to whom it has given certain powers for certain purposes from the general public burden of paying taxes. (1) *Lord Fitzgerald*.—"There is nothing to be found in this income in the nature of a district or local rate, or of a rate or tax which could be considered as a payment by which the inhabitants of the locality procure for themselves some local benefit. The dues are in effect levied on the whole world coming to the Mersey or Liverpool; and on those taking advantage of the docks or other property of the Appellants." (2) *Lord Chancellor*.—"It would be a very strange thing indeed, and wholly inconsistent with the principles which are well established as to the construction of Acts of Parliament, and I may say more especially of local and personal Acts of this nature, if taxes imposed by the authority of the Legislature by public Acts for public purposes, were held to be taken away by general words in a local and personal Act, and an Act in which the Crown is nowhere mentioned as to be bound by it. . . . The words (of Schedule A, No. III) say that no deduction is to be in respect of the application of the 'said profits.' "

Sowrey v. Harbour Moorings Commissioners of King's Lynn (High Court of Justice, 1887).

It was held, following the Mersey case, that the profits (which by law must go to the repayment of borrowed money) are profits assessable to income tax. *Smith, J.*—"If once you get a taxable profit, or taxable revenue, or taxable sum of money, it is perfectly immaterial what the destination of that sum may be."

SCHEDULE A (No. III)—contd.**Markets.**

In re Corporation of Birmingham (In the Exchequer, England, 1875).

It was held that the corporation is not entitled to deduct from the assessments on the profits of its market hall, fish market, vaults, and meat market, any losses sustained in other concerns, such as the disposition of sewerage, industrial schools, etc.

Attorney-General v. Scott (In the Exchequer, England, 1873).

It was held that the corporation of the City of London were assessable under Schedule D for their profits from market-tolls, corn and fruit métages, brokers' rents, mayor's court fees, etc., and that each item should be assessed separately, without reference to the purposes to which the profits are applied. It was admitted at the trial that the renewal fees were chargeable under Schedule A, No. II, Rule 5.

Markets and Slaughter-houses are assessable under Rule III, Schedule A, see *Adam v. Maughan*—under **Crown**, page 62.

Railways.—See separate heading—page 142.

Cemeteries.

Paddington Burial Board v. Commissioners of Inland Revenue (High Court of Justice, 1884).

It was held that the surplus income from fees charged to persons using a burial ground (provided out of the poor rate) is assessable to income tax notwithstanding a direction contained in the Act of Parliament under which it was provided, that any surplus income should be applied in aid of the poor rate. *Day, J.*—"It is a business carried on for the benefit of the ratepayers. . . . We need not trouble ourselves about the destination of the profits. Once profits are ascertained to exist the income tax attaches. . . . I see no reason whatever why they should be exempted more than any cemetery company or any individual that likes to carry on the business of burying his neighbour."

SCHEDULE A (No. III)—*contd.*

Edinburgh Southern Cemetery Co. v. Kinmont (Court of Exchequer, Scotland, 1889).

It was decided (1) that a cemetery company, which sells the perpetual use of ground for graves, may make no deduction on account of the gradual exhaustion of its capital ; also (2) that the profits of a cemetery should be assessed under Schedule A, No. III.

(1) *Lord President*.—"The case of the *Coltness Iron Company* (see page 258) has now finally settled the meaning and intention of the Income Tax Acts in regard to incomes of this description." . . . *Lord Shand*.—"I think it is quite right that, as the years have been going on, and the land which was the source of profit of this company was getting gradually exhausted, as a mercantile concern, they should be applying portions of the money which they were receiving for the exclusive use of that ground to the redemption of their capital. Their original stock of ground which was to be the source of their profit was gradually disappearing. . . . The Balance Sheet is quite in accordance with what a trader in such circumstances would do. But it is a very different question that is raised here as to whether, though that may be a very proper operation in a trader's balance sheet, the sums which are received and which are proposed to be applied to redemption of capital can be properly regarded as profits under the Income Tax Acts." (Held to be assessable.) (2) *Lord President*.—"As to the non-application of Schedule A, No. II, Rule VI—see page 164—"The company are in actual possession and occupation of the cemetery." *Lord Shand*.—"All these different concerns (Schedule A, No. III) relate to concerns which, having purchased or acquired land, remain in the occupation and use of the land themselves, and are using it for the purpose of some trade or business whereby they acquire profits. If any company has that feature in common with the ironworks, etc., enumerated it falls to be assessed in terms of Rule III." *Lord McLaren*.—"I should not be disposed to hold that any unnamed business or trade carried on by the use of land would fall

SCHEDULE A (No. III)—*contd.*

under Rule III, if it were possible by fair construction to bring it within Rules I and II. . . . There are cases where it is very difficult to separate the income of a proprietor into rental and commercial profits (*e.g.*, canals). Rule III appears to have been devised to meet such cases, though it is proper to observe that the remuneration also includes works of a description in which it seems to be quite possible to make such a separation (*e.g.*, gasworks)."

Portobello Town Council v. Sulley (Court of Exchequer, Scotland, 1890).

It was held that no deduction may be made from the profits of a burial ground in respect of the repayment of instalments on borrowed capital and of interest. *Lord President*.—"Interest cannot possibly form a proper deduction in estimating the assessable profit. . . . Taking the Mersey Dock case, the Paddington case, and the Edinburgh Southern Cemetery case, I think it is quite impossible to escape from the conclusion that the whole of this profit is assessable under Schedule A, No. III, Rule 3."

Paisley Cemetery Co. v. Reith (Court of Exchequer, Scotland, 1898).

It was held that the assessment on the profits of a cemetery must include lump sums received for the perpetual maintenance of lairs, although such payments may have been invested as capital. *Lord President*.—"The receipt sets forth the terms of the contract under which the money is agreed to be accepted; and the terms of that receipt do not set out any undertaking to set aside the money so received and apply only the interest in the way of embellishing the graveyard. That element being absent, the thing comes to be of the simplest description. The Company for a sum down undertake a perpetual obligation, and the case being thus entirely deprived of the semblance of trust, it resolves itself into this question only: Is

SCHEDULE A (No. III)—*contd.*

income tax chargeable where money is received and a perpetual obligation undertaken?" (Answered in the affirmative.)

NO. III.—First, second, and third rules (*continued*).—The duty to be charged on the person, corporation, company, or society of persons carrying on the concern, or their agents or officers having its direction or being in receipt of the profits,

—before paying or distributing the produce or the value either between the persons, etc., engaged in the concern, or to the owner of the soil or property, or to any creditor or other person having a claim on or out of the said profits,

—and all such persons, etc., shall allow, out of such produce or value, a proportionate deduction of the duty charged,

—and the said charge shall be made on the said profits exclusively of any lands used or occupied in or about the concern,

—the computation of duty arising in respect of any such *mine* carried on by a company of adventurers shall be made in one sum; provided that if any adventurer shall declare his proportion or share in such concern in order to a separate assessment it shall be lawful to charge such adventurer separately,

—provided that any adventurer (in mines) may set his loss in one concern against his profits in another, and the assessment shall be made on the balance in the parish where the greatest amount shall be chargeable. (*Income Tax Act, 1842, s. 60.*)

Union Assessment committees may not require the production of documents relating to the assessment to income tax on concerns in the nature of trade chargeable under Schedule A. (*Revenue Act, 1863, s. 22.*)

Assessment under Rules of Schedule D.

Concerns in No. III, Schedule A, shall be charged and assessed according to the rules prescribed by Schedule D, so far as they are consistent with the rules of No. III. (*Revenue Act, 1866, s. 8.*)

[Concerns in No. III, Schedule A, shall be charged upon as if they were profits or gains included in Schedule D, and all provisions of the Income Tax Acts applicable to matters in the said Schedule D, including all rules so applicable, shall apply to those concerns. Provided that the provisions contained under No. III shall

SCHEDULE A (No. III)—*contd.*

continue to apply and nothing in this section shall apply any provisions of the Act which are inconsistent with the provisions contained under No. III.—*Clause in Revenue Bill, 1914, s. 20 (1).]*

Special Appeals.—Persons assessed in respect of quarries of stone or slate, and mines contained in No. III, Rule 3, may appeal to the special commissioners. (See **Special Assessments and Appeals**, page 324.) (*Income Tax Act, 1860, s. 7.*)

NO. IV.—Rules and Regulations respecting the said Duties.—

First.—All properties chargeable in Schedule A shall be charged in the parish where situate *except*—

- (1) Canals, inland navigations, streams of water, drains, levels, or railways, or other roads or ways of a public nature, and belonging to any company, in which cases the profit may be stated in one account and charged where the accounts are usually made up. Duties may be deducted from payments of interest to creditors or the interest may be paid in full.
- (2) Manors and Royalties extending into different parishes, which may be assessed in one account in the parish where the court for such manor is usually held.
- (3) Profits from Fines receivable by one person, body, or company, which may be assessed in one account where the person chargeable resides.

Second.—All lands occupied by the same person as tenant or owner shall be returned and charged according to parishes. Separate returns shall be made of the properties in each parish and of the lands belonging to distinct owners.

Third.—For any dwelling-house in the occupation of a tenant which (with the buildings and offices belonging thereto and the land occupied therewith) shall be under the annual value of £10; and for all lands and tenements let to any tenant for a period less than one year—the assessment shall be charged on the landlord, but so as not to impeach the remedy of the recovering of the duty from the occupier. (*Income Tax Act, 1842, s. 60.*)

On application being made by the landlord or immediate lessor of any lands, houses, or buildings to the clerk to commissioners on or before 31st July in any year, the general commissioners may, if they think fit, charge such landlord or lessee to the duties under Schedule A, and recover the duties from him (but not so as to prejudice the

SCHEDULE A (No. IV)—*contd.*

right of recovery on the premises) for the year of application and subsequent years.

The request may be cancelled in any year by written notice to the clerk to commissioners on or before 31st July. (*Finance Act, 1898, s. 10.*)

Fourth.—Compositions, rents, or other payments in lieu of tithes may (if the commissioners think fit) be assessed on the occupiers of the lands, or on the persons liable to the payment of such compositions, etc.—Returns may be required from such persons (as returns of lands).

Tithe Rent Charges.—See *Income Tax Act, 1853, s. 32* and dicta in *Stevens v. Bishop*, page 162.

Fifth.—If a mine has, from some unavoidable cause, been decreased and is decreasing in annual value, so that a five years' average will not give a fair estimate, the commissioners may make an assessment on the preceding year's profits and gains.

If a mine has wholly failed, the assessment may be discharged.

Mines shall be charged where situate or where the produce is manufactured.

Sixth.—If an account of profits under Rules II and III cannot be made up because the possession or interest of the party to be charged commenced within the time stated, an estimate shall be made on the profits accrued since the commencement of the possession.

Seventh.—Any house or tenement occupied by a foreign minister shall be charged on and duty paid by the landlord or person immediately entitled to the rent.

Eighth.—Any house or tenement or apartment belonging to Her Majesty (except apartments in Royal Palaces), occupied by any officer of Her Majesty in right of office or otherwise, shall be charged on the occupier upon the annual value thereof.

See also under **Crown**.

Ninth.—Occupiers being tenants shall deduct tax from the next payment of rent to the landlord.

—All landlords (including Her Majesty) shall allow such deduction under penalty. (*Income Tax Act, 1842, s. 60.*)

See page 104 for cases of omission to deduct tax.

A person liable to pay rent or other annual payment (either as a charge on the property or a personal obligation) whether payable half-yearly or at other periods, may retain thereout duty at the

SCHEDULE A (No. IV)—contd.

rate in force at the date of payment, but no more duty than he has actually borne on the property. (*Income Tax Act, 1853, s. 40.*)

Hancock v. Gillard (High Court of Justice, 1907).

A tenant of a licensed house made a payment of rent less the proportion of the compensation fund charge which was required by the Licensing Act, 1904, s. 3, to be borne by the landlord. It was held that he was entitled to deduct income tax as from the whole rent payable, and not only from the amount actually paid. *Bigham, J.*—"In my opinion the Act of 1904 was never intended in any way whatever to affect the Income Tax Act of 1842, nor does it by its terms affect that Act; all that the Act of 1904 does is to declare that the tenant may make, in respect of the charges which are levied upon him under the Act, a deduction from his rent . . . In my opinion that does not affect, in any way whatever, the meaning of the expression 'rent payable' in the Income Tax Act of 1842."

Tenants of lands, tenements, hereditaments and heritages, called upon to pay arrears of tax due from former occupiers, may deduct such amount from any subsequent payment of rent to the landlord.

Duties may not be levied upon the occupier for any arrear which ought to have been levied upon and ultimately paid and borne by any former occupier. (s. 35.)

Duty may be deducted from payments of rent-charges under the Drainage Advances Acts, at one-third of the rate payable. (s. 42.)

Tenth.—Landlords, owners, and proprietors may retain tax on charges (including rent charges under the Act for the commutation of tithes or otherwise).

Eleventh.—Mortgagees or creditors in possession are liable to pay or suffer deduction of tax.

Twelfth.—If an owner, being also the occupier, dies after the assessment is made but before payment of duty, it shall be paid by the heirs, executors, administrators, or assigns entitled to the profits, who shall also be liable for all arrears of duty according to their respective interests.

Thirteenth.—A house divided into distinct properties and occupied

SCHEDULE A (No. IV)—*contd.*

by distinct owners, or their respective tenants, shall be charged on the respective occupiers. (*Income Tax Act, 1842, s. 60.*)

Any house or building let in different apartments or tenements and occupied by two or more persons severally, shall be charged as one entire house or tenement, and the assessment made on the landlord.

In default of payment by him, duty may be levied on the occupier or occupiers, and the duty paid may be deducted out of the next or any subsequent account of rent. (*Income Tax Act, 1853, s. 36.*)

Fourteenth.—No deductions shall be allowed not authorised by this Act, nor unless an account of the deductions is delivered to the assessor ; the surveyor may surcharge on error. (*Income Tax Act, 1842, s. 60.*)

NO. V.—Particular Deductions and Allowances under Schedule A.
—**First.**—Tenths, first-fruits, duties and fees on presentation, paid by any ecclesiastical person within the year preceding that in which the assessment is made.

Second.—Procurations and synodals paid by ecclesiastical persons, on an average of seven years preceding.

Third.—Repairs of collegiate churches and chapels, and chancels of universities, or any college or hall in any university, by any ecclesiastical or collegiate body, rector, vicar or other person bound to repair. (*Income Tax Act, 1842, s. 60.*)

Allowance shall be made of the actual expenses within the preceding year. (*Income Tax Act, 1853, s. 34.*)

Fourth.—Parochial rates, taxes and assessments on any rent charge confirmed by the Act for the commutation of tithes, on the amount paid in the year for which the assessment is made.

Fifth.—Land tax charged on lands, tenements, hereditaments or heritages.

Sixth.—Amount charged by public rate or assessment in respect of drainage, fencing or embanking.

An allowance shall be made of the amount expended by the landlord or owner on an average of the twenty-one preceding years in the making or repairing of sea-walls or other embankments necessary for the preservation or protection of such lands against a sea or tidal river. (*Income Tax Act, 1853, s. 37.*)

SCHEDULE A (No. V)—*contd.*

Hesketh v. Bray (Court of Appeal, 1888).

It was held that the allowance in Section 37, Income Tax Act, 1853, does not extend to expenditure incurred in reclaiming land from the estuary of the river Ribble, but only to expenditure incurred in preserving lands in their existing state. *Esher, M.R.*—"If you are not making the wall to protect the land as it then is, but for some other purpose with regard to the land, it is not within the section." *Lindley, L.J.*—"This land was a salt marsh. The first question which occurs to me to ask myself is, What was the necessity for preserving or protecting it at all? It might have gone on for ever as a salt marsh. But it occurred to the owner that it would be more profitable to him if he could keep the water out."

All rules.—The allowances (except where tax is borne in whole or in part by deduction by a tenant) shall be made by deduction from the assessment on the property, except—

Rules one, two and three, where the allowances may be granted to the person liable to the charges in one sum, by deduction from the assessment on him, or by repayment; and—

Any allowances for payments out of any rent charge confirmed under the Act for the commutation of tithes, where the allowance shall be made by repayment. (*Income Tax Act, 1842, s. 60.*)

Any repayment under No. V shall be claimed at the expiration of the year of assessment before the general commissioners, who shall certify the matter to the special commissioners, who shall order repayment. (*s. 61.*)

McGregor v. Macfarlane (Court of Exchequer, Scotland, 1889).

No allowance may be made from an assessment on lands under Schedule A in respect of a casualty of one year's rent paid to a superior on entering. *Lord Lee.*—"The appellant's view (that the assessment charges the rent, firstly in his hands and again in the hands of his superior) is founded on the idea that a composition paid to a superior by a singular successor, for his entry, makes the superior the proprietor in right of the rents for the year

SCHEDULE A (No. V)—*contd.*

in which the entry is obtained. I think the composition is exigible not as rent but as the price payable for entry and that it is a mere accident that in some cases the amount of the price is measured by a year's rent."

NO. VI.—Allowances to be made in respect of the duties under Schedule A.—Public buildings and offices belonging to any college or hall in any university (not occupied by any individual, member, or person paying rent), and for the repairs of the same and the gardens, walks, and grounds for recreation, repaired and maintained by the funds of such college or hall.

Public buildings, offices, and premises belonging to any hospital, public school, or almshouse (not occupied by any individual officer, or master, whose income amounts to or exceeds £150 per annum, or by any person paying rent for the same), and for the repairs of the same and of the gardens, walks, and grounds for recreation, repaired and maintained by the funds of such hospital, public school or almshouse.

Any building, the property of any literary or scientific institution, used solely for the purposes of such institution, and in which no payment is demanded or made for any instruction afforded there by lectures or otherwise; provided that the building is not occupied by any officer nor by any person paying rent for the same.

These allowances shall be granted by the general commissioners.

Rents and profits of lands, tenements, hereditaments or heritages belonging to any hospital, public school or almshouse, or vested in trustees for charitable purposes, so far as the same are applied to charitable purposes.

These allowances shall be granted on proof before the special commissioners of the due application to charitable purposes only, in as far as so applied. They shall be claimed by the agent or trustee, etc., by affidavit before any commissioner for the district where he resides, stating the amount of the duties, and the application. They shall be carried into effect by the special commissioners without vacating the assessments. (*Income Tax Act, 1842, s. 61.*)

Where any allowance is granted by the special commissioners they shall issue a certificate to the Board. (*s. 62.*)

SCHEDULE A (No. VI)—contd.**Hospitals.**

Needham v. Bowers (High Court of Justice, 1888).

Exemption under Schedule A was refused to a self-supporting institution for the insane in which some patients paid sufficiently well for poorer ones to be supported without payment, although it was founded by charitable donations and made no profit. *Charles, J.*—"The language in the Income Tax Act must be restricted to people supported wholly or in part by charity, and that does not apply to a hospital which is self-supporting and which indeed has a large annual surplus derived from the payments made by patients."—It was also held that the profits of such an institution are not exempt from assessment under Schedule D.

Cawse v. Lunatic Hospital, Nottingham (High Court of Justice, 1891).

Exemption was allowed to a lunatic hospital with substantial charitable endowments, although some patients were taken at remunerative prices. *Pollock, B.*—"When the word hospital is used in Rule No. VI it intends to exempt anything that is practically of the character of a hospital being of an eleemosynary character." *Charles, J.*—"All colleges and halls of universities are exempt, even though it was proved that in any particular year a particular college or hall had paid its way. With regard to public schools, the words apply to a public school which has some charitable element in its endowments. The same thing has been held with reference to hospitals. The question is not whether this institution does or does not in any particular year receive payment from patients which enable it to pay its way. The question is, what is the character of the institution itself? In this case there is a substantial charitable endowment."

Public Schools.

Bain v. Free Church of Scotland (Court of Exchequer, 1897).

It was held that the exemption allowed to public schools

SCHEDULE A (No. VI)—*contd.*

does not include the Free Church College, Edinburgh, which is used for the training mainly of candidates for the ministry, though also of other students in certain subjects.

Blake v. Mayor of London (Court of Appeal, 1886).

It was held that the exemptions allowed to public schools include the City of London School which was founded to give a liberal education to boys on payment of substantial fees. The balance of the expenditure is met by an annual payment by the corporation, and no profit is sought. *Esher, M.R.*—"It is maintained partly by a donation which was in its origin charitable and voluntary. The object of the school is the education of a sufficiently large number of persons to enable us to say that that object is a public object." *Fry, L.J.*—"We have to construe the words 'public school' in a clause which creates an exemption, and creates it not only in favour of hospitals, almshouses, and public schools, but also 'of any college or hall of any of the universities of Great Britain.' We have, therefore, to read the words 'public school' in connection with these other words. Now I agree with what Mr. Justice Denman has said: 'The main object of the Legislature in providing the exemption in Section 61 must be considered. The intention seems to have been to exempt not merely institutions which were purely charitable, but institutions *ejusdem generis* with the colleges and halls which form the first class of property exempted. There can be no doubt that the colleges and halls of universities are not institutions, wholly supported by charity. The legislature did not intend the exemption to be in favour only of schools wholly supported by charity.' "

Almshouses.

Trustees of Mary Clark Home v. Anderson (High Court of Justice, 1904).

It was held that the exemption allowed to "almshouses" extends to the case of a home for ladies in reduced

SCHEDULE A (No. VI)—*contd.*

circumstances (who must have, among other qualifications an income of from £25 to £55 a year) the expenses of which are provided for by endowments. *Channell, J.*—"There is no doubt that here there is a substantial charitable endowment. It seems to me that in this case the limits laid down of the amount of income which make a person ineligible are not such that it can be said it is beyond reason for anybody to consider that person a poor person: . . . I have come to the conclusion on the whole that this, being an institution the objects of which are entirely and absolutely charitable, can be deemed to be an almshouse. I do not think it is necessary that to make a thing an almshouse it should be for entirely destitute people or that it should supply all the wants of its inmates."

Literary Institutions.

Andrews v. Mayor, etc., of Bristol (High Court of Justice, 1892).

Exemption was refused to a building used as a free library. (Overruled—see below.)

Mayor of Manchester v. McAdam (Court of Appeal, 1895).

Exemption was refused to a building used as a free library maintained by the Manchester corporation. (Reversed on appeal—see below.)

Mayor of Manchester v. McAdam (House of Lords, 1896).

In the House of Lords it was held that the building referred to in the preceding case was within the exemption allowed to literary and scientific institutions. *Lord Herschell*.—" (1) Its object is to spread a knowledge and love of literature among the people. Such an institution is in my opinion quite aptly termed 'literary.' (2) What is meant when the 'property of such institution' is spoken of? No more than that it is property appropriated to and applied for its purposes. (3) I cannot see how it would become less a literary institution if the corporation were empowered to levy rates for its maintenance."

SCHEDULE A (No. VI)—contd.

Musgrave v. Magistrates and Town Council of Dundee
(Court of Exchequer, Scotland, 1897).

It was held that a building used as a free library, and otherwise entitled to exemption as a literary institution, is liable to assessment by reason of the accommodation provided therein for the books of a subscription library under the control of the librarian of the free library. The exempting section requires buildings to be "solely" used for the purposes described. *Lord President*.—"It is said that as the rent paid (in books) for room and services is applied to the free library, the use is for its purposes. But this would prove too much, for it would equally apply to the money rent which might be paid by a chess club or a lodger. . . . It appears to be clear that the buildings are used for the accommodation and for the purposes of the subscription library, and therefore that they are not used solely for the purposes of the public free library."

Scientific Institutions.

(The four cases which follow are Corporation Duty Cases under Customs and Inland Revenue Act, 1885, s. 11. The exemption allowed therein is similar to the exemption from Income Tax, Schedule A, allowed to Scientific Institutions.)

Society of Writers to H.M. Signet v. Commissioners of Inland Revenue (Court of Session, Scotland, 1886).

Corporate body possessed of heritable property. Claim to exemption as a scientific institution refused. *Lord President*.—"There may be cases in which property, or the income of property, may conduce indirectly to the promotion of education, literature, science, or the fine arts, and yet will certainly not fall within this exempting clause. Almost every institution which is created for the purpose of benefiting its members by the erection of a library would in this view fall under that clause of exemption. It would be enough to show that indirectly the property does promote—does go to the promotion to a certain extent, or in a certain way, of education, literature,

SCHEDULE A (No. VI)—*contd.*

or science. But I apprehend that the meaning of this clause of exemption is that the property or income shall be, if not exclusively, yet certainly in the main, and as its chief object, devoted to the promotion of education, literature, science, or the fine arts. . . . These institutions, the library, etc., are brought into existence because they will help to the attainment of the end for which every member enters the Society, viz., by the exercise of his profession to make pecuniary gain. It is quite impossible to say that in any substantial sense this money is applied for the purpose of promoting either education, literature, science, or the fine arts."

Commissioners of Inland Revenue v. Forrest (House of Lords, 1890).

Exemption was claimed by Forrest (Institution of Civil Engineers) on the ground that the property concerned was legally appropriated and applied for the promotion of science.

Held that the primary object of the Institution was the promotion of science in the abstract ; the advancement of the professional interest of members was at least secondary to the main object. The claim was allowed.

Sulley v. Royal College of Surgeons, Edinburgh (Court of Exchequer, Scotland, 1892).

Exemption was refused in respect of the buildings used as a library, museum, etc., by the Royal College of Surgeons, incorporated as a teaching and examining body for the advancement of the science of surgery. *Lord President.*—"Its primary and proximate objects are professional, and its methods square with the requirements of the profession, and if it furthers research it is only incidentally and indirectly."

Royal College of Surgeons of England v. Commissioners of Inland Revenue (Court of Appeal, 1899).

Exemption was claimed in respect of property stated to be appropriated and applied to the promotion of science.

SCHEDULE A (No. VI)—*contd.*

Held that the college had two main objects, neither subsidiary to the other. (1) The promotion of science. (2) The encouragement of surgery, including the interests of surgeons and the examination of students. The claim was refused, there being no obligation to apply the property to the first main object.

Rents and Profits of Lands.

Maughan v. Free Church of Scotland (Court of Exchequer, Scotland, 1893).

It was held that an Assembly Hall, used for religious meetings and for other purposes connected with religion, charity, and temperance is not within the exemption under Schedule A, No. VI. *Lord President*.—"To put it shortly, they are not a college or hall or any of the Universities; nor is this a hospital, public school, or almshouse; nor can they say that they are a literary or scientific institution. Accordingly they have made their demand for an allowance on the fourth head of the rule (*i.e.*, in respect of *rents and profits* of lands, vested in trustees for charitable purposes). I think it perfectly plain that this clause relates to rents and profits of lands as distinguished from the land themselves."

King v. Special Commissioners of Income Tax (ex parte Essex Hall). (Court of Appeal, 1911.)

The enactment in Schedule A, No. VI, with reference to the rents and profits of lands, etc., vested in trustees for charitable purposes does not extend to property occupied by the trustees. *Master of the Rolls*.—"The exemption in question applies only to a case where charity trustees, or a charitable corporation, let their property to a tenant and receive rents and profits in respect of such letting."

What constitutes a charitable purpose?—See under Charities, page 41.

REPAIRS.

In respect of tax charged under Schedule A upon annual value

SCHEDULE A (REPAIRS)—*contd.*

otherwise than by relation to profits, the following allowances shall be made—

- (a) Lands (inclusive of a farmhouse and other buildings assessed therewith)—an allowance of one-eighth part of the assessment.
- (b) Houses or buildings (except those included in (a));
 - (i) Where the owner is the occupier or is assessable as landlord, and where the tenant is occupier and the landlord bears the cost of the repairs—an allowance of one-sixth part of the assessment.
 - (ii) Where a tenant is occupier and bears the cost of repairs—an allowance not exceeding one-sixth part of the assessment, as is necessary to reduce the assessment to the amount of the rent.
- (c) The right of deduction of tax from charges is not affected.
- (d) This section does not apply where in the case of lands or houses the assessment is more than one-eighth or one-sixth part, respectively, below the amount of the rent, after deducting from the rent any outgoing allowed to be deducted from the assessment. (*Finance Act, 1894, s. 35.*)

Smith and others (Overseers of Worthing) v. Richmond
(*House of Lords, 1899.*)

Held, under the Agricultural Rates Act, 1896, that the glasshouses in a market garden are “buildings” and not within the description of “agricultural lands.”

Maintenance, repairs, insurance, and management.—If the owner of any land or houses to which this section applies shows that the cost to him of maintenance, repairs, insurance and management, according to the average of the preceding five years, has exceeded, in the case of land, one-eighth part, and in the case of houses, one-sixth part of the annual value thereof as adopted under Schedule A, he shall be entitled, in addition to the reduction under Section 35, Finance Act, 1894, on making a claim, to repayment of duty on the excess not exceeding in the case of land, one-eighth part, and in the case of houses one-twelfth part of the duty on an amount equal to the annual value. (*Finance (1909-10) Act, 1910, s. 69 (1).*)

The limit under Section 69 of the Finance (1909-10) Act, 1910, on the amount of duty which may be repaid on account of the

SCHEDULE A (REPAIRS)—*contd.*

maintenance, repairs, insurance, and management of land or houses shall be removed as respects income tax for the year beginning the 6th day of April, 1914, and any subsequent year. (*Finance Act, 1914, s. 8.*)

Maintenance includes the replacement of farmhouses, farm buildings, cottages, fences and other works, where the replacement is necessary to maintain the existing rent. (*Finance (1909-10) Act, 1910, s. 69 (1).*)

This section shall apply to any land (inclusive of farmhouses and other buildings if any), the assessment on which is reduced, for purposes of collection, under Finance Act, 1894, s. 35, and to any houses the annual value of which (under Schedule A) does not exceed £8, the assessment on which is so reduced. (s. 69 (2).) For 1914 and later years substitute £12 for £8. (*Finance Act, 1914, s. 8.*)

In comparing the cost of maintenance, repairs, insurance and management of any land or houses with the annual value, the total cost therefor on any land managed as one estate, or of any houses on such land, shall be compared with the total annual value of the land or houses. (s. 69 (3).)

All the provisions of the Income Tax Acts which relate to claims for exemption, relief, or abatement, or the proof with respect to those claims, shall apply to claims under this section.

Provided that if the owner of any land or house makes and delivers to the surveyor of taxes of any district in which the land or house is wholly or partly situate a declaration as to the cost to him of maintenance, etc., and the surveyor is satisfied as to its correctness, the amount of the allowance shall be certified by the surveyor and repayment made accordingly. (s. 69 (4).)

In computing the five-year average, the year shall be taken as ending on March 31st, or such other date as may be adopted by the owner (with the consent of the surveyor of taxes) and the five preceding years shall be those preceding the commencement of the year for which the duty claimed is charged. (s. 69 (5).)

SCHEDULE B—

For and in respect of the occupation of all such lands, tenements, hereditaments, and heritage as aforesaid,¹ and to be charged for

¹ Under Schedule A.

SCHEDULE B—*contd.*

every twenty shillings of the annual value thereof. (*Income Tax Act, 1853, s. 2.*)

Tax shall be charged for every twenty shillings of one-third of the annual value of lands, tenements, hereditaments, and heritages chargeable under Schedule B, in respect of the occupation thereof. (*Finance Act, 1896, s. 26.*)

Duties under Schedule B shall be charged under the following rules.

NO. VII.—Rules for Assessing and Charging the Properties under Schedule B.—The duty shall be charged in addition to the duties to be charged under Schedule A, on all the properties directed to be charged to the said duties, according to the general rule in No. I, Schedule A, on the full annual value thereof, except—

a dwelling-house and the domestic offices thereunto belonging, and which dwelling-house shall not be occupied by virtue of one and the same demise with a farm of lands, for the purpose of farming such lands, or with a farm of tithes, for the purpose of farming the same,

and (except) warehouses or other buildings occupied for the purpose of carrying on a trade or profession. (*Income Tax Act, 1842, s. 63.*)

In re Middleton (In the Exchequer, Scotland, 1876).

In assessing a deer forest under Schedule B, the basis should be the annual value according to Schedule A, No. I. *Lord President.*—"The two assessments (A and B) plainly go together. They are intended to apply and do apply to the same subjects, and the tax is payable as assessment upon the annual value."

Revell v. Scott (Court of Exchequer, Scotland, 1895).

A tenant of a farm has two leases, one for grazing and one for shooting rights. It was held that the assessment under Schedule B should be on a sum equal to the aggregate of the rents. *Lord President.*—"If Mr. Scott is occupant of the lands under both leases, then the rent he pays under both is rent for the occupation of these lands." *Lord Adam.*—"If the shooting and grazings had been included in one lease instead of two, the joint rent would necessarily have been the annual value of the lands in question."

SCHEDULE B—*contd.*

NO. VIII.—Rules for estimating the Properties hereinafter next mentioned under Schedule B.—Profits arising from lands occupied as nurseries or gardens, for the sale of the produce, shall be estimated according to the rules contained in Schedule D, and the duty shall be chargeable at the rate contained in the said Schedule ; and when the duty is ascertained it shall be charged under Schedule B. (*Income Tax Act, 1842, s. 63.*)

Such profits shall be charged and assessed under Schedule D, and the provisions of No. VIII shall be construed accordingly. (*Clause in Revenue Bill, 1914, s. 20 (2).*)

(Hop grounds were chargeable in like manner until Income Tax Act, 1853, s. 39.)

GENERAL.

Any person occupying lands for the purposes of husbandry only may elect to be assessed to the duties chargeable under Schedule D, and in accordance with the rules of that Schedule.

Such election shall be signified in writing by notice to the surveyor of taxes, within two calendar months after the commencement of the year of assessment. (*Customs and Inland Revenue Act, 1887, s. 18.*)

For the purpose of any claim to exemption, relief or abatement, the income arising from the occupation of lands, etc., chargeable under Schedule B, shall be taken to be one-third of the annual value thereof under that Schedule ; except that if any person occupying, as owner or otherwise, any lands, for the purposes of husbandry only, shows at the end of any year, to the satisfaction of the general commissioners, that his profits and gains arising from the occupation of such lands fell short of one-third of the annual value, the income shall be taken at the actual amount of such profits and gains. If the duty has been paid, the amount overpaid shall be repaid. (*Finance Act, 1896, s. 27.*)

Where any person shall sustain a loss . . . in the occupation of lands for the purpose of husbandry only, it shall be lawful for him, on giving notice in writing to the surveyor of taxes within six months after the year of assessment, to apply to the ¹general commissioners for an adjustment of his liability, by reference to the loss, and to the aggregate amount of his income for the year as estimated under the

¹ Now includes special commissioners also (*Finance Act, 1907, s. 27.*)

SCHEDULE B—*contd.*

income tax Acts. (*Customs and Inland Revenue Act, 1890, s. 23 (1).*)

The commissioners, on proof of the amount of the loss and of the payment of tax on the aggregate amount of income, shall give a certificate for the repayment of tax on the amount of the loss. (*s. 23 (2).*)

For the rest of the section see under “**Adjustment at end of Year**”—page 30.

SCHEDULES A & B—

NO. IX.—Rules for charging the said duties under Schedules A and B.—**First.**—The said duties (except where other provisions are made for estimating particular properties) shall be estimated according to the general rule contained in Schedule A, and shall be charged on and paid by the occupier for the time being, his executors, administrators and assigns.

Second.—Every person having the use of any lands or tenements shall be taken and considered as the occupier.

Third.—The duties shall be levied on the occupier for the time being, without any new assessment, notwithstanding any change in the occupation thereof; provided that every tenant, on quitting the occupation, shall be liable for the arrears at the time of so quitting, and for such further portion of time as shall then have elapsed, to be settled and levied by the commissioners, and repaid to the occupier by whom the same shall have been paid.

The executors or administrators of any deceased tenant shall be liable as the deceased would be if living. Tenants quitting before the assessment is made shall be liable for the portion of the year elapsed at the time of quitting, to be settled by the commissioners. (*Income Tax Act, 1842, s. 63.*)

Tenants called upon to pay arrears under Schedule A due from former occupiers may deduct the amount from any subsequent payment of rent to the landlord.

No distraint shall be allowed in respect of arrears under Schedule A or B, which ought to have been levied on and ultimately paid by any former occupier of the lands, tenements, or hereditaments. (*Income Tax Act, 1853, s. 35.*)

See page 48 for other enactments authorising distraint.

SCHEDULES A and B (No. X)

NO. X.—Rules for estimating the annual value of properties in Schedules A and B or either of them.—**First.**—Where a landlord pays out of the rent any parochial rates, taxes and assessments chargeable on the occupier, or composition for tithes, or where a rector, vicar, etc., entitled to any rent or other annual payment in lieu of tithes (except rent-charges confirmed by the Act for the commutation of tithes) or any composition for tithes, shall pay out of the amount thereof any such parochial rates, taxes, and assessments chargeable on such tithes, the annual value shall be estimated exclusive of these payments (taken as the actual amounts paid in the preceding year).

Second.—Where any tenant contracts to pay aids, taxes, or assessments chargeable on or payable by the landlord, the amount thereof paid by the tenant in the preceding year shall be added to the rent if reserved within seven years; or if the rent was not reserved within seven years it shall be added to the estimate under the general rule.

Third.—Average prices for determining the annual value when the rent depends on the price of grain or corn.

Fourth.—When the rent depends on the produce the annual value shall be based on that of the preceding year.

Fifth.—In Scotland such property shall be assessed under the general rule. (*Income Tax Act, 1842, s. 63.*)

The assessment shall be based on the return, if satisfactory; if not, or if no return is made, an estimate shall be made according to the General Rule. If the annual value cannot be otherwise ascertained the following rules shall be observed—

NO. XI.—First.—The assessment shall be made on the sums in the poor rate, if rated on the full value.

Second.—The assessment shall be made on sums proportionate to those in the poor rate, if rated proportionately to the full value.

Third.—If rates are in different proportions to value, the proportion as regards lands shall be the guide throughout.

Fourth.—Where the proportions of the rate are not known, a calculation shall be made as to the relation between the annual value of and rates on like properties for which the rack-rent has been ascertained. (*s. 64.*)

See page 198 as to the inspection of the rate book.

SCHEDULES A and B (GENERAL)**GENERAL RULES.**

Dwelling-house, or tenement, with offices, gardens and lands occupied therewith, or any lands separately occupied which are under the annual value of £10—the assessor may estimate the annual value (without requiring return) and make an assessment, unless the surveyor objects to such estimate and requires a notice to be delivered. (s. 65.)

Assessor may require the production of the lease where necessary. When produced, if the premises are let within seven years and no consideration in money other than the rent is contained therein, the assessor may make an assessment according to such rent.

Such assessment is not binding if the commissioners consider that the lease, etc., does not express the full consideration, or that the rent reserved is less than the rack-rent on occasion of repairs or improvements, or is made in any respect to conceal the annual value, or has been assigned for any consideration in value.

Where land is let at a reserved rent in consideration of improvements by the tenant, the rent being settled on the medium annual value in the expectation of a progressive improvement, the duty under Schedule A shall be payable on an assessment based on such reserved rent, and the duty under Schedule B on the rack-rent for the term of the lease, to be ascertained at the commencement of the demise. (s. 66.)

Where a tenant is at rack-rent under parol demise or is not able to produce the lease, he may deliver an account of the annual rent reserved, which shall be regarded as compliance with the requirements. The assessor may make an assessment accordingly, subject to the commissioners' consideration as in Section 66.

Lands held for a longer period than seven years, under demise from year to year or at will, shall be assessed at the annual value thereof unless the rent is fixed on a demise within seven years. (s. 67.)

In Scotland the tenants shall produce their lease on notice (under penalty of treble duty), or leave it with a justice of the peace or clergyman when the farm is more than ten miles from the assessor's dwelling-house. (s. 69.)

Duties shall be assessed on all lands, tenements and hereditaments whether occupied at the time of assessment or not.

Empty Property.—Duties shall not be levied under Schedule A

SCHEDULES A and B (GENERAL)—*contd.*

on any house which shall be or become unoccupied for such year or a portion of such year, but the assessment thereon for such year or the portion of such year shall upon appeal be discharged or diminished by the commissioners, on due proof. (s. 70.)

Note.—It is under this section that unoccupied houses are not charged. There is no such provision as regards unlet lands.

Distrain.—Where lands charged under Schedule A are unoccupied and no distress can be found thereon at the time the duties shall be payable, the collector may, at any time after, enter upon the said lands when distress shall be found thereon, and seize and sell. (s. 70.) *Also see page 48 as to distrain.*

Reading v. Chew (*High Court of Justice*, 1898).

A distraint on the occupier of certain premises for arrears of duty assessed under Schedule A in the previous year, was held to be lawful. *Bruce, J.*—"Section 70, Income Tax Act, 1842, seems to be an enactment expressly providing for this very case."

When assessments on tithes or teinds are not paid when due, the collector or officer may distrain thereon, or on any other goods or chattels of the owner, wherever the same can be found. (s. 71.)

For assessments on compositions for tithes or teinds, or any rent or payment in lieu thereof, the occupier of the lands charged therewith shall be answerable for the duty, and may deduct the same out of the next payment of rent.

For assessments on profits of manors or royalties, markets, fairs, tolls, fisheries or any other annual or casual profits not distrainable, the owner, occupier or receiver of the profits is answerable, and may retain or deduct duty from the profits.

The collector may distrain on the persons referred to by any ways prescribed in the Acts. (s. 72.)

Contracts, covenants and agreements between landlord and tenant, or any other persons, touching payment of taxes and assessments to be charged on their premises, shall not be deemed to extend to income tax, nor to be binding contrary to the intent and meaning of the Income Tax Acts.

All duties shall be charged on and paid by the occupiers, subject to the authorised deductions and repayments which shall be allowed,

SCHEDULES A and B (GENERAL)—*contd.*

notwithstanding such contracts, etc. (*Income Tax Act, 1842, s. 73.*)

See a similar enactment (s. 103) and decisions thereon set out on page 107.

Commissioners, inspectors, surveyors, and assessors or any person authorised by them, may, from time to time and at all seasonable times, inspect and take copies of or extracts from rate books without payment of any fee. (s. 76.)

Assessors in Scotland shall be assisted by schoolmasters. On bringing in their assessments they shall be examined on oath by the commissioners. (s. 77.)

Where no return is made, or the return is not satisfactory, the commissioners may make an order for the assessors, inspectors or surveyors (with a person of skill) to view and examine the lands or other property, after two days' notice, and at all seasonable times in the daytime. (They may enter any lands, etc., and measure and survey.) (s. 78.)

On any appeal the commissioners may reduce the assessment to the rent (as proved by lease, etc.,) if satisfied that this represents the full annual value. If it appears to the commissioners that any lands, etc., are assessed at an annual value less than the rent received or worth, they may increase the assessment to such rent. (s. 82.)

Where a loss is sustained, by any flood or tempest, on a growing crop or on a stock of lands let to a tenant, or where the lands shall by such flood, etc., be incapable of cultivation for any year, and it is proved on oath to the commissioners that the owner has abated the rent or part of the rent, the commissioners may abate the assessments in respect of the property and occupation of such lands, for the whole or like proportion of duty as the owner has abated of or from the rent. (s. 83.)

A like relief shall extend to occupiers where the owners (being infants, idiots, etc.,) are incapable of consenting to abate the rent, to the amount the commissioners consider would have been abated had the owner been capable of consent. (s. 84.)

Like relief under Schedules A and B may be allowed where the lands are occupied by the owners. (s. 85.)

Continuance of Assessments.—First assessments shall remain in force for three years unless—

SCHEDULES A and B (GENERAL)—*contd.*

(but see the note on page 10 respecting new assessments under Schedules A and B)

First.—A person is under-rated or omitted, or has obtained an exemption or allowance to which he is not entitled; the inspector or surveyor may surcharge for all years in single duty, only, unless the commissioners consider the assessments to be deficient through the wilful neglect of the person charged:

Second.—A person not chargeable in the first year becomes chargeable in the second or third years; returns may be required as in the first year:

Third.—A person appeals in the second or third year (which he may do as in the first year); if the appeal is vexatious and without reasonable cause the commissioners may award costs for the attendance of the inspector, surveyor, or assessor which shall be added to the assessment, and paid to such officer as other payments are made to.

It shall be lawful for the collector to levy the assessment for the second and third years, on the occupier for the time being, by the same books delivered for the first year, unless the commissioners revoke the appointment of that collector, alter the assessments or deliver a new book.

Commissioners' duplicates shall be made for each year and be delivered to the proper officer, and at the Board's office. All powers for rectifying any assessments shall be in force for the second and third years as fully as if the assessments were made for those years. (s. 87.)

Section 87 does not now extend to the Metropolis. (*Valuation (Metropolis) Act, 1869, s. 77.*)

In any year when a new valuation is not made, that of the preceding year stands. Thus the valuation for 1913-14 is carried on for 1914-15 under the following subsection:—

¹The annual value of any property which has been adopted for income tax under Schedules A and B, or for inhabited house duty, for the year ending on April 5th, 1914, shall be taken as the annual value of such property for the same purpose for the next subsequent year. (This subsection shall, as regards inhabited house duty in Scotland, be construed with the substitution of May 24th

¹ Refers also to House Duty.

SCHEDULES A and B (METROPOLIS)

for April 5th; it shall not apply to the Metropolis.) (*Finance Act, 1914, s. 2 (3).*)

Metropolis.—Under the *Valuation (Metropolis) Act, 1869*, the valuation list as approved by the assessment committee, and, if altered on any appeal to any sessions or a superior court, as so altered, shall come into force on April 6th next after it is made and shall last for five years, subject to any alterations that may be made by any supplemental or provisional list.

In construing the *House Tax Acts*, the full and just yearly rent shall be deemed to be the gross value stated in such list.

In construing the *Income Tax Acts* with respect to Schedules A and B, the annual value shall be deemed to be the gross value stated in such list.

No alteration is made by this Act as to the mode of valuing or taxing any hereditament not included in any valuation list, or which is chargeable according to the profits and not the gross value, or the mode of charging the occupiers of land subject to a tithe rent charge.

Where for the purposes of assessment to House Duty, or to Income Tax under Schedule B, it is necessary to make a separate valuation of any hereditament by reason of its not being separately valued in any valuation list, the value of such hereditament shall be ascertained in the same manner as if this Act had not passed.

Turner v. Carlton (High Court of Justice, 1909).

The assessment of a theatre for income tax under Schedule A, and for house duty, was fixed in 1903-4. For 1904-5 and 1905-6 the assessment of 1903-4 was required by law to be adopted. It was decided that the commissioners were not able to revise the assessments for the latter years. (On the question as to a claim to the deduction of a fire insurance premium paid by the lessor, the opinion was expressed that it should be refused, although the point was not required to be decided.)

SCHEDULE C—

For and in respect of all profits arising from interest, annuities, and dividends and shares of annuities, payable to any person, body

SCHEDULE C—contd.

politic or corporate, company or society, whether corporate or not corporate, out of *any public revenue*.

To be charged for every twenty shillings of the annual amount thereof. (*Income Tax Act, 1853, s. 2.*)

Secretary of State for India v. Scoble (House of Lords, 1903).

It was held that a payment spread over a term of years (termed an annuity), made by the Secretary of State for India for the purchase of a railway, was not liable to income tax as an annuity.

(*In the Court of Appeal*) *Vaughan Williams, L. J.*—
 “It had really to be admitted that in any case in which it appeared upon the face of the contract that there was a debt existing independently of the contract which gave rise to the annual payment, if the annuity or annual payment was, on the face of the contract, of such a nature that you could say on reading the contract: This is not a contract for the purpose of an annuity; it is a contract under which a debt is made payable by instalments—that the income tax would not apply in such a case to the whole sum payable by such annual instalments. It is not denied, but that the Income Tax Acts would apply and income tax be payable in respect of so much of the annual payment as was not a repayment of an instalment of the antecedent debt.” *Stirling, L. J.*, quoted *Baron Watson* in *Foley v. Fletcher*.—“An annuity means where an income is purchased with a sum of money and the capital has gone and has ceased to exist, the principal having been converted into an annuity.” *Stirling, L. J.*, speaking of annuities which are of a taxable nature, said:—
 “Those are cases of purchase of annuities where investment has been made in that form of property, and the legislature in so many words has said that that is to be taxed; and it is recognised in this very case that an annuity of that kind is taxable. . . . It is a different matter where it appears, on the face of the transaction, that the so-called annuity is not a thing of that kind, but simply represents instalments of an existing

SCHEDULE C—*contd.*

debt." *Mathew, L. J.*—"Annuity, in the ordinary sense of the expression, means the purchase of an income. It generally involves the conversion of capital into income, and, reasonably enough, where the buyer places himself in that position, the Act of Parliament taxes him; he has got an income secured in the way I have mentioned."

In the House of Lords. Lord Shand.—"The element which in a great measure enables one to determine this case is the fact that this proceeding between the parties originates with an antecedent fixed debt due by the Government, which the Government had to pay to the Railway Company." *Lord Lindley.*—"The annuity in this case is, to my mind, proved to demonstration to be nothing more than the payment by equal instalments of the purchase money for the railway with interest."

Annuities.—See also page 92.

Special Commissioners.—The special commissioners shall be the commissioners for assessing and charging the duties on all dividends and annuities payable out of the revenue of any foreign state, to any persons, corporations, companies or societies in the United Kingdom. (*Income Tax Act, 1842, s. 29.*)

Assessment.—The duties shall be paid by the persons and corporations entrusted with the payment of the annuities, etc., on behalf of the persons, corporations, companies or societies entitled thereto, and shall be assessed by commissioners authorised for the purpose.

The duties shall extend to all public annuities whatever, payable in the United Kingdom out of any public revenue in Great Britain or elsewhere, and to all dividends and shares of such annuities.

Exemptions.—*First.*—The Stock of Friendly Societies—see page 76.

Second.—The Stock of any Savings Bank—see page 153.

Third.—The Stock of any Charitable Trust—see page 40, and the stock or dividends in the names of any trustees, applicable solely to the *repairs* of any cathedral, college, church or chapel, or any building used solely for the purpose of divine worship. Such application shall be proved before the special commissioners.

Fourth.—Stock or dividends transferred to accounts in the Bank

SCHEDULE C—*contd.*

of England, in the name of the Treasury or of the National Debt Commissioners.

The Bank of England shall forward a statement of such amounts, from time to time, to the special commissioners.

Fifth.—Stock belonging to Her Majesty—see page 61. Stock belonging to a foreign minister—see page 73. (*Income Tax Act, 1842, s. 88.*)

All claims to exemption under Schedule C shall be made to the special commissioners. They shall be in writing in the form required by the Board. Special commissioners may require verification of the claims by affidavit before them, and may examine on oath such persons as they think proper, and may require answers. When allowed, orders for repayment shall be made as under Schedule A, No. V. (*s. 98.*)

General.—As regards annuities payable to the Bank of England and South Sea Company, and annuities payable by the National Debt Commissioners, and dividends or shares of all other annuities out of any public revenue entrusted for payment to the Bank of England and South Sea Company, the companies, corporations and commissioners having their distribution or payment, shall, as payments become due, deliver to the commissioners for the duties accounts, in books, of the amounts, distinguishing the separate account of each person, etc., entitled to any part.

The commissioners shall make assessments from time to time, and deliver books to the special commissioners.

The special commissioners shall send certificates of the total amounts, with the description of the corporation, etc., entrusted with payment, to the commissioners making assessments and to the Board. (*s. 89.*)

On receiving notice of the assessments, the companies shall set apart and retain the sums assessed.

The persons entitled to the annuities shall suffer the deduction of tax. (*s. 93.*)

The money so set apart shall be paid into the account of the Board at the Bank of England, with a certificate of assessment signed by two commissioners. (*s. 94.*)

Where the half-yearly payment on such annuities, dividends and shares shall not amount to fifty shillings, the commissioners shall

SCHEDULE C—*contd.*

not be required to make any assessment thereon, but duty shall be charged under Case III, Schedule D, as on profits of an uncertain value. (s. 95.)

In the case of the payment of annuities, dividends, or shares, payable out of the public revenue of any Colony or Settlement of the Crown to persons, etc., in the United Kingdom, the persons, etc. (other than the Bank of England, East India Company, and the National Debt Commissioners), intrusted with the payment shall, without further notice, deliver to the Board an account in writing containing—

- (1) their names and residences, and
- (2) a description of the annuities, etc., entrusted to them, within one calendar month of being so required by public notice in the *London Gazette*. They shall also, on demand, deliver to the inspector authorised by the Board accounts of all amounts payable by them, for the use of the special commissioners.

The special commissioners shall make an assessment under Schedule C, and the persons entrusted with payment shall pay the duty into the Bank of England to the account of the Board.

Duty shall be recoverable against such persons. (s. 96.)

Interest payable out of the public revenue on securities issued at the Exchequer or other public offices, and interest payable by the East India Company, shall be chargeable under Schedule C, by the commissioners for offices in the Exchequer.

The commissioners shall appoint assessors and collectors who shall compute the duty and certify it in an assessment to the officer paying the interest, who shall stop duty therefrom, and pay it to the Bank of England account of the Board.

Duty shall be allowed to be deducted from the interest. (s. 97.)

The provisions of the Income Tax Act, 1842, s. 96, shall extend to the case of persons entrusted with the payment of annuities, dividends, etc., payable out of the revenue of any foreign state. (*Income Tax (Foreign Dividends) Act, 1842, s. 2.*)

The provisions of the Income Tax (Foreign Dividends) Act, 1842, s. 2, shall extend to the case of dividends, etc., where the right or title of the person to whom they are payable is shown by the

SCHEDULE D—*contd.*

	PAGE
<i>Cases I V and V</i>	292, 293
<i>Case V I..</i>	304
<i>All Cases</i>	305

For and in respect of the annual profits or gains arising or accruing (1) *to any person residing in the United Kingdom*, from any kind of property whatever, whether situate in the United Kingdom or elsewhere, and from any profession, trade, employment or vocation, whether the same shall be respectively carried on in the United Kingdom or elsewhere, and

(2) *to any person whatever, whether a subject of Her Majesty or not, although not resident within the United Kingdom*, from any property whatever in the United Kingdom, or from any profession, trade, employment or vocation exercised within the United Kingdom;

and for and in respect of all interest of money, annuities and other annual profits and gains not charged by virtue of any of the other schedules—to be charged for every twenty shillings of the annual amount thereof. (*Income Tax Act, 1853, s. 2.*)

Any subject of Her Majesty whose ordinary residence shall have been in the United Kingdom, and who shall have departed from the United Kingdom and gone into any parts beyond the seas for the purpose of occasional residence, shall be deemed chargeable as a person actually residing in the United Kingdom upon the whole amount of his profits and gains, whether from property in the United Kingdom or elsewhere, or from any allowance, annuity, profession, employment, trade or vocation in the United Kingdom or elsewhere.

No person in the United Kingdom for some temporary purpose only, and not with a view or intent of establishing his residence therein, and who shall not have actually resided at one time or several times for a period equal to six months in any one year, shall be charged as a person residing in the United Kingdom in respect of profits or gains from foreign possessions or securities. He shall be charged to the year's duties after six months' residence in the United Kingdom, or in the event of his departing after claiming such exemption and returning. (*Income Tax Act, 1842, s. 39.*)

Foreign Partnership.—Where any trade or business is carried on by two or more persons in partnership, *and the control and management of such trade or business is situate abroad*, the said trade or

SCHEDULE D—*contd.*

business shall be deemed to be carried on by persons resident outside the United Kingdom and the partnership shall be deemed to reside outside the United Kingdom, *notwithstanding that some of the partners are resident in the United Kingdom*, and that some of the trading operations of the partnership are conducted within the United Kingdom. (*Finance Act, 1914, s. 10 (1).*)

Where any part of the trade or business *of such a partnership* consists of trading operations within the United Kingdom, the firm shall be assessable in respect of the profits of such trading operations within the United Kingdom to the same extent as, and no further than, a person resident abroad is assessable in respect of trading operations by him within the United Kingdom (notwithstanding the fact that one or more of the partnership are resident in the United Kingdom). For the purpose of assessing any such firm in respect of the profits of the said trading operations within the United Kingdom, an assessment may be made on the firm in the name of any partner resident in the United Kingdom. (s. 10 (2).)

Jurisdiction of Commissioners.

King v. General Commissioners of Taxes for Clerkenwell
(*Court of Appeal, 1901*).

A question was raised as to the jurisdiction of the commissioners in connection with *Kodak, Ltd. v. Clark* (see page 225). *Vaughan Williams, L. J.*—"When once you have a person engaged in trade within Great Britain the commissioners in the district in which he carries on the trade have jurisdiction to ascertain which are the limits of the trade so carried on, whether within or without Great Britain, for the purpose of fixing the quantum of the assessment."

WHAT CONSTITUTES RESIDENCE IN THE UNITED KINGDOM?
(**Individuals.**)

It should be noted that an individual is liable under Case I (page 256) on all profits arising in this country, whether he resides here or not. But (as in Young's case that follows) the question as to where profits arise often hangs on the question of residence. Further, only a resident may be assessed under Cases IV and V (page 292) in respect

SCHEDULE D (RESIDENCE)—*contd.*

of remittances from abroad. (See s. 39 above and Cooper v. Cadwalader and other cases set out below.)

In re Young (In the Exchequer, Scotland, 1875).

A master mariner who spends most of the year on his ship abroad is liable to income tax as a resident if he has a house for his wife and family in the United Kingdom. *Lord President.*—"Anything like continual residence is not a thing that this statute can be held to contemplate at all, if by continual residence were meant constant personal presence in one place. . . . If a man has his ordinary residence in this country, it does not matter much whether he is absent for a greater or a shorter portion of each year from that residence or from the country itself. A residence is a dwelling-place on land and the only dwelling-place on land which the appellant has is in Glasgow, where he dwells when at home, and where his wife and children dwell when he is at sea."

Rogers v. Inland Revenue (Court of Exchequer, Scotland, 1879).

A master mariner who is absent from the United Kingdom the whole year of assessment, but whose wife and family reside in the United Kingdom, is liable as a resident. *Lord President.*—"Every sailor has a residence on land and the question is, Where is this man's residence? The answer undoubtedly is that his residence is in Great Britain. He has no other residence, and a man must have a residence somewhere. . . . He is not a bit the less a resident in Great Britain because the exigencies of his business have happened to carry him away for a somewhat longer time than usual."

Lloyd v. Sulley (Court of Exchequer, Scotland, 1884).

A merchant who is ordinarily resident in Italy but owns a house in the United Kingdom in which he and his family reside for several months in the year is liable to income tax in respect of his business in Italy. *Lord President.*—"Now the only question which can be raised

SCHEDULE D (RESIDENCE)—*contd.*

is whether Mr. Lloyd was, for the year 1883-4, to which alone this case applies, residing in the United Kingdom. There is no mention in this taxing clause of the character of the residence as being ordinary residence or residence for any particular part of the year or proportion of it; 'residing in the United Kingdom' are the only words we have to guide us. Now if a man could only be resident in one place in any particular year there might be a great difficulty, but surely there is nothing more familiar to one's mind than that a man has during a particular year or during a course of years, residences in different places existing at the same time. A man cannot have two domiciles at the same time, but he certainly can have two residences. He can have a residence in the country, and a residence in town, or he may have three or more residences. That is to say, they are places to which it is quite easy for the person to resort as his dwelling-place whenever he thinks fit, and to set himself down there with his family and establishment. That is a place of residence, and if he occupies that place of residence for a portion of a year, he then is within the meaning of this clause" (i.e., *Income Tax Act, 1842, s. 39*, to which the following remarks also apply). "The first part . . . extends to a person who is not for a time actually residing in the United Kingdom, but who has constructively his residence there because his ordinary place of abode and his home is there, although he is absent for a time from it, however long continued that absence may be. With regard to the second part, the meaning is that if a foreigner comes here for merely temporary purposes connected with business or pleasure, and does not remain for a period altogether within the year of six months, he shall not be liable for a certain portion of taxation imposed by Schedule D. He would have been liable but for this exemption." See also *Lord President in Cooper v. Cadwalader*.—"In so far as the case of *Lloyd v. Sulley* may be held to be an authority for charging a person resident in the United Kingdom in respect of the profits of a trade carried on exclusively

SCHEDULE D (RESIDENCE)—*contd.*

abroad and not received in this country, it must be taken to have been overruled by *Colquhoun v. Brooks* (page 221)."

Cooper v. Cadwalader (*Court of Exchequer, Scotland*, 1904).

An American citizen, who usually resides in New York but rents a house and shooting rights in Scotland where he spends about two months in each year, is liable as a resident and does not come within the exemption of Section 39, Income Tax Act, 1842. *Lord McLaren*.—"The exemption (in Income Tax, 1842, s. 39) walks on two legs; firstly, that he is here for a temporary purpose only; and secondly, that he is here not with a view of establishing a residence. If the argument is lame on one of the legs, then the party does not get the benefit of the exemption, because he must be able to affirm both members of the double proposition. There might, I think, be a possible room for difference of opinion as to the meaning of the words 'view or intent of establishing a residence.' The words are somewhat vague, but they seem to me to recognise what may be called a constructive residence as distinguished from actual residence. . . . In order to get the benefit of the exemption you must say that you have no view and no intention of acquiring a residence there. For the purposes of the present case the first point in the exempting clause is quite sufficient, because I don't think that Mr. Cadwalader is in a position to affirm, when he comes year after year during the currency of his lease to spend the shooting season in Scotland, that he is here for a temporary purpose only."

Brown v. Burt (*Court of Appeal*, 1911).

An American citizen has lived for twenty years on board his yacht, which has been anchored within the port of Colchester, though kept in a sea-going condition. He was held to reside in the United Kingdom. *Hamilton, J.* (in the *High Court*).—"I am unable to understand why a man who personally lives on board a yacht for 20 years anchored a few hundred yards off the shore at Brightlingsea, does not reside there." *Master of the*

SCHEDULE D (RESIDENCE)—*contd.*

Rolls.—"The only question for us is this: Was there evidence upon which the commissioners could reasonably and properly come to the conclusion that Mr. Brown was residing in the County of Essex—has he in fact lived within the County of Essex for more than six months? The conclusion that the commissioners have arrived at is one which I myself should unhesitatingly have arrived at, but after all residence is a question of fact. I may reside in a place although I am quite well aware that I have no real business to be there; I am a trespasser, and I am well aware that if the true owner comes he may make me move, but none the less I am residing there. It is not necessary that I should reside there with an indefeasible title. . . . Then it is said that the yacht flies the American flag. I really do not see what that has to do with the matter."

Turnbull v. Foster (Court of Exchequer, Scotland, 1904).

The appellant has for 40 years carried on business in Madras where, besides his business premises, he has a residence in which he usually resides. In most years he has visited the United Kingdom, residing in his wife's house here, but in the year of assessment he did not come to this country although his children resided in the house referred to. It was held that he was not chargeable as a resident during that year. *Clerk, L. J.*—"We are dealing with a case in which during a whole year, the year of assessment, the person who was to be assessed as residing in this country has never been in this country. I think that would require a pretty strong case indeed." *Lord Trayner.*—"When you talk of a man's usual residence you talk of his ordinary residence. If that is so, then Section 39 (see page 206) covers the case. 'Any subject of Her Majesty whose ordinary residence shall have been in Great Britain' shall be liable, but this gentleman had not his ordinary residence in Great Britain, for *ex confesso* his ordinary residence was in Madras. Section 2, which is the charging section (see page 205), says he will be liable

SCHEDULE D (RESIDENCE)—*contd.*

‘for and in respect of the full profits or gains arising or accruing to any person residing in the United Kingdom.’ It is not ‘having a residence in the United Kingdom.’ He is to reside in the United Kingdom. I think that to suggest he was residing is contrary to the plain meaning of the admission to which I have already referred, and is contrary to the fact, for during the whole year of assessment he was residing in Madras and not in Great Britain at all.” *Lord Moncreiff*.—“During the year of assessment this gentleman was not residing in this country at all. I don’t think that that fact taken by itself would be by any means conclusive, because if he had been travelling, or had been a mariner, and had been absent the whole of the year, I don’t think that would have prevented him from having a residence in this country. But then, in addition to that, we find that his business is in Madras, and that I rather take to be his usual place of residence.”

WHAT CONSTITUTES RESIDENCE IN THE UNITED KINGDOM?**(Companies.)**

It will be noted that if a company “resides” in this country its profits (including those primarily arising abroad) are deemed to accrue in this country and are assessable under Case I. A special question arises when a company which admittedly resides here holds all or most of the shares of a second company resident abroad. See the next sub-heading (page 221) as to this.

Attorney-General v. Alexander and others (High Court of Justice, 1875).

The Imperial Ottoman Bank, the State Bank of Turkey, had a London Agency managed by a London Committee, and the annual general meeting of the shareholders was held in London. It appeared, however, that the London Branch was consistently and correctly regarded as an Agency only, and that the seat of the Bank was in Turkey. Income tax under Case I, Schedule D, should be charged on the profits of the London Agency only. *Cleasy, B.*—“The Crown has failed to make out that this Bank is

SCHEDULE D (RESIDENCE)—*contd.*

resident in England, or is even carrying on its business in this country, although some business is carried on at a Branch here."

Calcutta Jute Mills Co., Ltd. v. Nicholson (In the Exchequer, England, 1876).

Cesena Sulphur Co., Ltd. v. Nicholson (In the Exchequer, England, 1876).

In these cases the companies were registered in England and the directors' meetings were held here. It was held that both companies were liable as residents under Case I. *Kelly, C.B.*—"It is true that the mills are worked and the property is made available and the whole profits of the Company are earned in India. It likewise appears that out of the whole of its profits about two-thirds become payable to persons resident out of England and resident chiefly in India. And, again, what has not incorrectly been called the whole business of the Company is actually transacted in India. But then, when we look to the constitution of the Company, we find that it is entirely under the control of the governing body of the Company and the Company itself in England. . . . Where does a joint stock company reside? What is the meaning of the term 'residing' as applicable to a joint stock company and as applicable to this case? I do not propose at the present moment to express or even to suggest any opinion whether there may or may not be two places at which one and the same joint stock company or corporation can reside. The answer to the question, Where does a joint stock company reside? is, where its place of incorporation and where its governing body can be met with and found, and where its governing body exercises the powers conferred upon it by the Act of Parliament, and by the articles of association, where it meets and is in bodily and personal presence for the purposes of the concern. . . . This company resides at the office where the directors meet, where other meetings of the whole company, or those who represent the Company, are held, and where they

SCHEDULE D (RESIDENCE)—*contd.*

transmit their business and exercise the powers conferred upon them." *Baron Huddleston*.—"This is a corporation; it is not a partnership." (On the argument that as a partnership the English portion of the partnership would only be liable to pay tax on the profits which they received, whereas the Indian portion would not have to pay on theirs. As regards the identity or otherwise of a corporation with the aggregate of its members see dicta in *Styles v. New York Life Insurance Co.*, page 252; also the corporation cases on page 169, etc.)

Imperial Continental Gas Association v. Nicholson (*In the Exchequer, England, 1877*).

It was held that the Association, which was controlled from England, should be assessed under Schedule D, Case I (and not under Schedule A), on all its profits, including those not distributed as dividend. *Kelly, C.B.*—(Comparing this case with that of the *Cesena Sulphur Co., Ltd. v. Nicholson*)—"In everything which constitutes the substance of the one and the other case, the two cases are identical." (As to the portion of profits not distributed as dividend—). "It might have been appropriated to the dividend, but they thought fit to apply it in some other way—still it was profit." (As to Schedule under which charged—) "The whole of the provisions touching Schedule A, and particularly those which relate to and include these gasworks, are within this kingdom of England."

London Bank of Mexico v. Apthorpe (*Court of Appeal, 1891*).

A company, registered in England where all meetings are held and the company is managed, which carries on business as bankers in Mexico and Lima, is held to be assessable under Case I, Schedule D, on all profits, whether remitted to the United Kingdom or not. (This is *Colquhoun v. Brooks* "distinguished and applied."—See *Bartholomay Brewery Co. v. Wyatt*.) *Esher, M.R.*—"The profits cannot be got at except in England, and by dealing with all the transactions of the business carried

SCHEDULE D (RESIDENCE)—*contd.*

on under the directions of the masters in England, although some of those transactions are carried on abroad. . . . They have not two businesses, one which is carried on abroad, and the other which is carried on in England. The truth is they have only one business, and that is carried on in England. It is true that part of the profits of that business which is carried on in England is earned by means of transactions carried on abroad. That is not carrying on the business abroad. It is carrying on the business in England by means of some transactions of it which are carried on abroad." *Kay, L. J.*—"The business is carried on entirely in England, although some part of it is transacted (by the Head office in England) in foreign countries."

Denver Hotel Co., Ltd. v. Andrews (Court of Appeal 1895).

An English company carries on an hotel in the United States, where there is a salaried manager. The registered office is in England where all meetings are held and dividends are declared.

It was held that it should be assessed under Case I on all its profits, including those retained in America for distribution as dividend there.

San Paulo Railway Co. v. Carter (House of Lords, 1896).

An English company is formed to work a railway in Brazil and is directed from its registered office in London. It was held that it is resident in the United Kingdom, although there is a certain local management in Brazil. *Lord Chancellor.*—"A shipowner, or indeed a shipbroker, may not have any one of the ships, or the charter parties which he negotiates, in England; but by correspondence, or by agency, he may have both charters and ships, not necessarily British ships, all over the globe. But if he lives in London, and by his direction governs the whole of this commercial adventure, could it be properly said that he is not carrying on his trade in London? So it appears to me that this Appellant Company is carrying on the trade in London, from whence it issues its orders,

SCHEDULE D (RESIDENCE)—*contd.*

and so governs and directs the whole commercial adventure that is under its superintendence.”

Grove v. Elliots and Parkinson (High Court of Justice 1896).

An English company carries on the business of miners and oil merchants in Galicia and elsewhere, and there is a manager resident abroad who arranges contracts for the sale of the produce abroad. The registered office is in London where the directors meet and manage the business.

It was held that the assessment should be under Case I on the full profits, including those retained abroad for new works, etc., there.

James Wingate & Co. v. Webber (Court of Exchequer, Scotland, 1897).

A shipping company whose meetings are held abroad at its registered office, and whose managers reside abroad, was held not to be resident in the United Kingdom. As, however, the chartering and certain voyage receipts and payments are dealt with by a Glasgow firm, who retain the funds for payment of expenses or dividends in the United Kingdom, it was held that the company exercises a trade here. *Lord President.*—“(1) The company is constituted under Norwegian law; its registered office is in Norway; there are kept its books; there the ship is registered; and there two of its principal officers reside. . . . Prima facie this is a Norwegian Company, and I do not find adequate grounds for holding that it is resident in Great Britain. (2) The company at least exercises a trade in Glasgow. . . . The agents were in receipt of profits accruing to the company.” *As regards the verbal form of the assessment:* “It might perhaps be still more correct to lay the assessment on Messrs. Wingate expressly *as agents for the Company*, but I do not think the statute is departed from when they are assessed *for the profits of the Chanaral* (the name of the ship) without their relation to the Company being expressed.” *Note.*—The effect of this decision was to restrict the assessment to the profits of such part of the Company’s business as

SCHEDULE D (RESIDENCE)—*contd.*

was conducted by the Glasgow agents; the claim of the Crown (refused) was for tax on the whole of the Company's profits.

Frank Jones Brewing Co., Ltd. v. Aphthorpe (High Court of Justice, 1898).

An English company whose directors meet at the registered office in England (where its dividends are declared) carries on a brewery in America, where there is a local committee of management. The directors exercise constant supervision over this committee.

It was held that the assessment should be under Case I, on all the profits, including those retained abroad.

Goerz and Co. v. Bell (High Court of Justice, 1904).

The main business of the company was to purchase and prospect mining lands with a view to the formation of other companies to work them, and to deal in shares. It was registered in South Africa and its Articles provided that its head office should be either in London or elsewhere in Europe, or in South Africa. In fact, it had offices in London, Berlin, Paris and Johannesburg, but the commissioners found that almost every transaction of importance affecting the management, control and direction of the company was decided at the board meetings of the directors in London. It was held that the company "resided" in the United Kingdom for purposes of assessment to income tax.

Channell, J.—"Stated accurately, the question is, I think, whether the registration and incorporation of the company in South Africa prevents its being resident in the United Kingdom. . . . Although the company, by getting itself registered in the South African Republic, undoubtedly desired, so far as the term is applicable to a company before incorporation, to take advantage of the law of that country, yet, having regard to the constitution of the company as appearing from its articles, I can see nothing to prevent it after incorporation from residing

SCHEDULE D (RESIDENCE)—*contd.*

elsewhere, either instead of, or as well as, in the South African Republic, and I think that the company did reside elsewhere. . . . There is in the case a finding as to the head office which I take to be a finding of fact and which is certainly amply supported by the evidence, that the office in London was in fact the head office."

De Beers Consolidated Mines, Ltd. v. Howe (House of Lords, 1906).

It was held that a company, the majority of whose directors reside in the United Kingdom and hold in London meetings at which all the most important business is decided, is liable as a resident, notwithstanding that its registered office and mines are in South Africa, where its general meetings and some directors' meetings are held. *Lord Chancellor*.—"The company resides where the real business is carried on, *i.e.*, where the central management and control actually abides . . . London has always controlled the negotiation of the contracts (*i.e.*, for sale) with the Diamond Syndicate, has determined policy in the disposal of diamonds, the working and development of mines, the application of profits, and the appointment of Directors. . . . An individual may be of foreign nationality and yet reside in the United Kingdom. So may a company."

New Zealand Shipping Co., Ltd. v. Stephens. (Court of Appeal, 1907).

The company is registered in New Zealand, where there is a Board of Directors who manage the local business and negotiate the most important of the freight contracts. There is a separate Board of Directors in London who make all the other contracts of importance and conduct the general administrative business. It was held as a fact that the central management and control is vested in the London directors and, therefore, that the company is assessable under Case I on the whole of its profits. *Master of the Rolls*.—"In the present case (as stated by the Commissioners) there is a finding that the Shipping

SCHEDULE D (RESIDENCE)—*contd.*

Company was residing in the United Kingdom : and that, the House of Lords has decided, is a question of fact, unless it appears on the case that there could be no evidence justifying such a finding of fact before the Commissioners.”

Farwell, L. J.—“ I think the case is indistinguishable from the *De Beers'* case (see page 218), and I only wish to add that I agree that the Commissioners ought not to state either side out of Court by stating, under the guise of fact, that which is really law. Nor do I suppose for a moment that they would intentionally do it. If either side desired to urge to the Commissioners that there was no evidence to justify some particular finding which they were proposing to make, I think it is the duty of that party to ask the Commissioners to state, for the opinion of the Court, whether there is any such evidence as would justify such a finding. That would be a question of law, a question of evidence or no evidence, but if there is any evidence at all, then it is for the Commissioners and not for the Court.”

Egyptian Hotels, Ltd. v. Mitchell (Court of Appeal, 1914).

The Company was registered in England and the functions of the English directors were as shown in the extracts from the judgment given below. An independent local board existed in Egypt and by the Articles of the Company such Board was vested with the exclusive management and control of the Egyptian business. Further, it was found that this provision was not a mere form, but that the trade had actually been carried on in accordance with such articles. It was held in the High Court that the Company was assessable under Case I on its full profits, excluding those left abroad. The Court of Appeal reversed this decision, holding that the acts of the English directors as stated below did not amount to trading, and that the spending of the profits did not constitute the carrying on of the business. The company should be assessed under Case V on remittances

SCHEDULE D (RESIDENCE)—*contd.*

only. *Horridge, J.*, in the High Court. (His decision was reversed but his statement of facts is correct.)—"It seems to me that the following considerations show that there was evidence in which the Commissioners could find in this case that the head and seat and controlling power of the Company remained in England: (1) The Company was an English Company having its registered office in England; (b) the whole of the control of the share capital of the Company was left with the directors; (c) the question of the increase and reduction of the capital of the Company is left with the directors; (d) the business to be dealt with at an ordinary meeting includes the consideration of the profit and loss account, etc., and the declaration of dividends; (e) the remuneration of the local board in Egypt remains with the directors and the profits of the Egyptian business are from time to time to be ascertained as and when the directors consider expedient, etc. . . ."

American Thread Co., Ltd. v. Joyce (House of Lords, 1913).

The Commissioners decided that the company (which is registered abroad) is controlled and directed in the United Kingdom, and is, therefore, chargeable under Case I of Schedule D. The Lords held that the decision was conclusive if there was evidence to support it. *Lord Chancellor*.—"The Taxes Management Act of 1880 (Section 59; see page 76) precludes us from looking at the finding of the Commissioners except in so far as it is necessary to see whether there was any evidence which could have supported it. . . . In this case I cannot entertain any doubt that the real control and management of the company were with the directors in Manchester. No doubt it is true that with the details of the trade their directors did not ordinarily interfere. There was an executive committee who were the agents of the directors, and there was a minority of the directors in New York, who held weekly meetings and took an active part. But it is clear that the directorate in Manchester was a directorate

SCHEDULE D (RESIDENCE)—*contd.*

of paramount authority, as is shown not only by the fact that the reserved subjects are kept for them in extraordinary session, but by this that, as the Commissioners found, they were constantly supervising and guiding the policy of the company, even as regards matters which belonged to manufacture and trading."

PERSONS AND COMPANIES OWNING A FOREIGN BUSINESS OR A PREPONDERATING SHARE IN A FOREIGN COMPANY.

May the profits of such businesses and subsidiary companies be assessed under Case I?

Colquhoun v. Brooks (*House of Lords*, 1889).

A resident in the United Kingdom was a partner in a firm carrying on trade out of the United Kingdom.

He was held to be liable under Case V, on remittances only.

(Note.—"The business was *entirely* carried on abroad"—see judgments in *San Paulo Railway Co. v. Carter*.) *Lord Herschell*.—"It is clear that as regards income arising from investments or from possessions outside the United Kingdom, the tax is only to fall upon so much of the income as is received in this country. . . . The Act has not provided the requisite machinery for assessing the duty on trade profits arising and remaining abroad. . . . 'Possessions' is a wide expression. I cannot see why it may not fitly be interpreted as relating to all that is possessed out of the United Kingdom. And if so, I do not think that any violence would be done to the language if it were held to include the interest which a person in this country possesses in a business carried on elsewhere." *Lord Macnaghten*.—(Re Income Tax Act, 1842, s. 39 and Case V, Schedule D.) "The expression 'foreign possessions' is to be taken in the widest sense possible, as denoting everything that a person has as a source of income."

SCHEDULE D (FOREIGN BUSINESSES, ETC.)—
contd.

Bartholomay Brewing Co. v. Wyatt (*High Court of Justice*, 1893).

An English company owns breweries in America which are carried on by an American company, most of whose shares are held by the English company.

It was held that liability is under Case V only, but the decision has been overruled by *Apthorpe v. Peter Schoenhofen Brewery Co.* (1899).

Nobel Dynamite Trust Co. v. Wyatt (*High Court of Justice*, 1893).

An English company acquires shares in English and foreign explosives companies. It was held that liability is under Case V only, but the decision was overruled by *Apthorpe v. Peter Shoenhofen Co.* (1899).

United States Brewing Co. v. Apthorpe (*High Court of Justice*, 1898).

A company whose registered office is in England, where it is managed, owns breweries in America, two of which are held in the name of a foreign company. The bulk of the shares of the second company are owned by the English company. It was held that the assessment should be under Case I on all the profits.

St. Louis Breweries v. Apthorpe (*High Court of Justice*, 1898).

An English company acquired all but thirteen of the shares of an American brewery company, which was subsequently managed by the American directors holding the said thirteen shares. All books were kept in America, but were audited by an Accountant sent out from England. The English directors received annual accounts and stated what dividend should be declared by the American directors. Hitherto the latter body had invariably declared the dividend so suggested. It was held that the company was assessable under Case I, on all profits, including those retained in America for distribution as dividend there. *Wills, J.*—"I am perfectly well aware that theoretically and actually the business of the American

SCHEDULE D (FOREIGN BUSINESSES, ETC.)— *contd.*

company will be carried on by the American directors and that the English company has no legal or direct control. . . . There is a perfectly well-recognised way of carrying on the business by managing the affairs of an external company by the machinery of taking pretty nearly the whole of the shares into which their capital is divided, and in that way, although not theoretically and not in such a sense as to make their orders legally binding, they can and do practically control the business carried on by the American company. As it seems to me, the business which the English company is carrying on is expressed in their Articles, namely, the business of managing the American company by means of this controlling agency, the effect of which is certain not only to be felt, but to be operative in the management of the American concern. . . . I wish to make it perfectly clear that my decision does not depend upon the very narrow ground of this description of their business appearing in the Memorandum of Association, because, if I said that, it would be an immediate suggestion that the obligations of an English Company could be avoided by altering the Articles of Association. What one looks at is not the words but the substance."

Apthorpe v. Peter Schoenhofen Brewing Co., Ltd. (Court of Appeal, 1899).

An English company (managed from its registered office in England) was formed to acquire a brewery in America then owned by an American company. In order to comply with American law the latter company remained in existence and continued to own the brewery, but the English company acquired all its shares except three. The directors of the English company delegated "their powers" to a committee of management in America, consisting of the directors of the American company. It appears that the powers of the English directors were correctly described by counsel for the company as follows: "The only means by which the English directors can exercise their power of control is the means by which

SCHEDULE D (FOREIGN BUSINESSES, ETC.)—
contd.

every majority of shareholders in a company exercises it, by vote. The directors of the English company have no legal right to control or interfere with the management of the American company except in their character of shareholders." It was held that the assessment should be under Case I, and should include the profits retained abroad, where most of the shareholders resided.

The contention of the company and the Courts' views thereon are shown in the following extract from the judgment of *Romer, L.J.*—"The Appellants in this appeal contend that the case is one where the English company merely occupies the position of holding all the shares, or substantially all the shares in the American company, and has nothing more to do with the business in Chicago, and that the English company merely influences matters by reason of its position of holding the shares in the American company, which enables it to elect the officers of that company. I think it is not so. *The matter ought to be treated as one of substance and not of form, and the conclusion I have come to on the facts is that it was intended from the commencement that the English company should take over the business, its assets, and its management, and that it should carry on that business by its agents selected and governed by itself. I think this intention was carried out, and that the business was taken over by the English company, and has since been managed and carried on here through the English company's direction, acting in Chicago by its agents there,* though no doubt the American company was kept on foot for the purpose of holding the real estate there and of generally guarding the English company for the purposes of the American law, and also for purposes of formally declaring dividends and so forth. I may add that there is nothing to show that by the American law the circumstance of the American Company's existence for the purposes I have indicated was inconsistent with or antagonistic to the fact of the English company really owning the business and really carrying it on by its agents."

SCHEDULE D (FOREIGN BUSINESSES, ETC.)—
contd.

See also *Phillimore, J.*, in *Clark v. Kodak, Ltd.*, 1903. "In *Apthorpe v. Peter Schoenhofen Brewing Co., Ltd.*, the commissioners found as facts that the business carried on at Chicago was in fact carried on by and was the business of the respondent company, and the profits made were the profits of the respondent company; and the Court of Appeal largely went upon the question that they could not go behind those facts. . . . I do not find throughout that case any suggestion that the three outstanding shareholders had any real interest in their shares."

Kodak, Ltd. v. Clark (Court of Appeal, 1903).

An English company, formed to control certain foreign companies, holds 98 per cent. of the shares of the Eastman (American) Kodak Company. Each company transacts business with the other, as with any other concern. It was held that the profits of the American company are not assessable under Case I. *Phillimore, J. (in the High Court of Justice)*.—"One must not make the jump from 'control' to 'carrying on business.' A company may control another company or an individual, or an individual may control a company, but it does not necessarily follow that because the individual controls the company, or the company controls the company, that the business carried on by the person or company controlled is necessarily a business carried on by the controller; and particularly is that the case when the machinery of companies is used, and the controller is the company." Then follows an examination of the decision in *Apthorpe v. Peter Schoenhofen Brewing Co., Ltd.* (1899)—see extracts from the present judgment set out under that case above. Reverting to the case under consideration—"The facts before me show that the number of shareholders holding 2 per cent. of the whole shares are independent people—or most of them are independent people—having their own interest in the Eastman Kodak Company, to which they adhere, and in respect to which they must be considered. Now, that being the case, I do not think it can be said

SCHEDULE D (FOREIGN BUSINESSES, ETC.)—
contd.

that Kodak, Ltd.—though controlling and managing the Eastman Kodak Company—is, when the Eastman Kodak Company carries on business under its control, thereby itself carrying on the business. . . . The American company are manufacturers and vendors, and the English company are buyers. Obviously if the business of the American company was the business of the English company it would not matter, except as a matter of book-keeping and account, at what rate the goods transferred from the Eastman Kodak Company to the Kodak, Ltd., were debited and credited. It matters exceedingly to the 2 per cent. of the American shareholders. . . . I am not at all certain that the true view is not that 98 per cent. of the profits of the Eastman Kodak Company ought not to be returned by Kodak, Ltd., as part of its profits; but that point has not been argued before me . . . and of course one must remember that no shareholder has a right to any profits until the dividends are declared.” The judgment was approved in the Court of Appeal.

Ogilvie v. Kitton (Court of Exchequer, Scotland, 1908).

A person who resides in Aberdeen owns a business in Canada which is carried on by his managers there. He has sole right of control. It was held that he is assessable under Case I. *Lord Stormonth Darling*.—“The head and brain of the trading adventure are to be found in Aberdeen. . . . It is said that although Mr. Thomas Ogilvie, senior, may have in theory the absolute control of the business or trade locally situated in Toronto, since it is carried on for his sole benefit and he could do with it what he likes with no one to say him nay, yet not a single instance has ever occurred in which he has as a matter of fact, attempted to exercise his control, or to give directions even about the smallest detail. Yet the right of control is there all the time, and might be exercised at any moment. It is a matter, as it seems to me, of power and right, and not of the actual exercise of right or power. The necessary

SCHEDULE D (FOREIGN BUSINESSES, ETC.)— *contd.*

inference from forbearance to exercise the right of control is that the man who possesses it is content for the time with the way in which his wishes are being carried out and his interests attended to by his employees."

Stanley v. Gramophone and Typewriter, Ltd. (Court of Appeal, 1908).

A German company is governed by its Board of Supervision and Board of Management. An English company holds all the shares of this company, and nominates the members of its Board of Supervision. Its Board of Management also is composed of persons who are directors of the English company. The whole profits of the German company are included in the report of the English company, but a portion thereof is not remitted to England, being set aside to meet depreciation of patents as required by German law. It was held that the English company is only liable to be assessed on sums remitted to England.

Master of the Rolls.—"The fact that an individual by himself or his nominees holds practically all the shares in a company may give him the control of the company in the sense that it may enable him, by enforcing his voting powers, to turn out the directors and to enforce his own views as to policy, but it does not in any way diminish the rights or powers of the directors, or make the property or assets of the company his as distinct from the corporation's. Nor does it make any difference if he acquire not practically the whole, but absolutely the whole of the shares. The business of the company does not thereby become his business. He is still entitled to receive dividends on his shares, but no more. *I do not doubt that a person in that position may cause such an arrangement to be entered into between himself and the company as will suffice to constitute the company his agent for the purpose of carrying on the business, and thereupon the business will become for all taxing purposes his business. Whether that consequence follows is in each case a matter of fact.*

SCHEDULE D (FOREIGN BUSINESSES, ETC.)—
contd.

In the present case I am unable to discover anything, in addition to the holding of the shares, which in any way supports this conclusion. The German company was not at first, and there is no evidence that it has ever become, a sham company or a mere cloak for the English company. . . . The Crown can, in my opinion, only succeed by making out that the German company was merely the agent of the English company as principal in carrying on the business. Nothing short of this would suffice. We have been greatly impressed by the case of *Apthorpe v. Peter Schoenhofen Brewing Company*, but, when the facts of that case are looked up, it is apparent that the Chicago company was a mere form kept up to satisfy the American law, and that the three American directors occupied the position of delegates of the English company. In other words, the relation of principal and agent did exist in that case.” *Fletcher Moulton, L.J.*—“It has been decided by this Court in the *Automatic Self-cleaning Filter Syndicate, Ltd. v. Cunningham*, that in an English company by whose Articles of Association certain powers were placed in the hands of the directors, the shareholders could not interfere with the exercise of those powers even by a majority at a general meeting. Their course is to obtain the requisite majority to remove the directors and put persons in their place who agree to their policy.”

As to the functions of the Commissioners and powers of the Court on a case stated. Master of the Rolls.—“It is undoubtedly true that, if the Commissioners find a fact, it is not open to this Court to question that finding unless there is no evidence to support it. If, however, the Commissioners state the evidence which was before them and add that upon such evidence they hold that certain results follow, I think it is open, and was intended by the Commissioners that it should be open, to the Court to say whether the evidence justified what the Commissioners held.”

SCHEDULE D—*contd.***AGENTS OR BRANCHES IN UNITED KINGDOM.**

Do the foreign principals carry on a trade here through such agent, etc. ?

Sulley v. Attorney-General (In the Exchequer, England, 1860).

An American firm had one partner resident in the United Kingdom, whose sole business was to purchase goods and export them to his firm in America for re-sale there by that firm. The only moneys received by him were in the way of remittances from New York. It was held that there was no trading in this country. *Cockburn, L.J.*—“The argument for the Crown must be carried to this extent, that merely buying goods in this country is a trade exercised here so as to subject the purchaser of the goods to income tax. (*Rejected.*) . . . The question is, whether there is any carrying on or exercise of the trade in this country. I think there is not, looking at the sense in which the term is used, and having regard to the subject matter of the statute.”

Erichsen v. Last (Court of Appeal, 1881).

Some of the cables of a foreign company are connected with the United Kingdom, and certain wires between Aberdeen, Newcastle and London are maintained by agreement with the General Post Office. It was held that the company carries on a trade in the United Kingdom, and must be assessed on the profits derived from its receipts here. No deduction was allowed on account of foreign cables used for the transmission of the messages concerned. *Master of the Rolls.*—“They generally receive payment in this country for messages sent from abroad, and they do transmit messages from stations in this country abroad. I think either will do, and I think both will do, to make it carrying on a trade. I think a carrier who simply regularly undertakes the carriage of goods abroad for money paid in this country as part of his ordinary business would be carrying on trade in this country, although the whole of

SCHEDULE D (FOREIGNERS TRADING HERE) —
contd.

the carriage was done abroad. The mere fact of his entering into contracts with English subjects for sole right of carriage appears to be the same thing as if he made similar contracts for the sale of goods. . . ." *Brett, L. J.*—"Whenever profitable contracts are habitually made in England by or for a foreigner with persons in England, because those persons are in England, to do something for or supply something to those persons, such foreigners are exercising a profitable trade in England, even though everything done by them in order to fulfil their part of the contract is done abroad. The profit arises to them from the contract which they make." *Cotton, L. J.*—"When a person habitually does a thing which is capable of producing a profit, for the purpose of producing a profit, and enters into a contract habitually, he is carrying on a trade or business."

Tischler v. Apthorpe (High Court of Justice, 1885).

A foreign firm has a *del credere* agent here who receives payment for all sales in England. Wine is variously sent direct from abroad and through the agent. The foreign firm has an office here, and one of its partners sometimes travels in this country.

It was held (1) that the firm is chargeable on the profits of all sales here, and (2) that it is correct to make the assessment on the foreign firm if it can be got at. *Mathew, J.*—" (1) The firm is a French firm, with its chief place of business at Bordeaux. One of the partners comes here every year, and remains for about four months on and off, soliciting orders. At the office of their agents these gentlemen have a room devoted to their business, rented by them, and occupied by a clerk who represents them. They have their names in the office. . . . The firm (Fenerheerd) were *del credere* agents, but that does not affect the position of the principal or agent, or alter in any way the character or relation between them. The contracts made, although they are guaranteed by the *del credere* agent, are the contracts of the principal and are

SCHEDULE D (FOREIGNERS TRADING HERE)— *contd.*

binding upon the principal. (2) If the principal can be got at there is no need to have recourse to Sections 41 or 44, Income Tax Act, 1842."

Pommery & Greno v. Apthorpe (*High Court of Justice*, 1886).

French wine merchants employ an agent in England, who obtains orders and receives payment from the purchasers. The wine is supplied from a stock here or from abroad. It was held that an assessment should be made on the profits of all wine sold here. *Denman, J.*—"What we have to decide is, is there a trade carried on within the meaning of the Act in this country? Now, I think there is; and upon this simple ground, that there are orders obtained in this country, the Appellants' name up at the office, an agent at work for them, the money passing through his hands, the drafts going over to France for endorsement only, a banking account kept in this country, and the goods delivered in this country to the customers. That is enough to bring this case within the statute."

Werle & Co. v. Colquhoun (*Court of Appeal*, 1888).

French wine merchants have an agent in England who obtains orders. Payment is variously made to the agent and to the French merchants. The wine is supplied from France at the expense and risk of the purchasers. It was held that the French firm exercise a trade here.

Esher, M.R.—"The question of whether money is paid in England or not is not necessary to be decided in this case. If it is, it is a strong circumstance, but it is not necessary to this fact, that a trade is carried on in England.

"If the trade consists in making contracts, which are profitable contracts, if those contracts are made in England, then the trade is carried on in England because the making of the contracts is the very substance and essence of the trade. Therefore, upon the facts of this case and bringing one's ideas of business to bear upon it, I have not a doubt

SCHEDULE D (FOREIGNERS TRADING HERE)— *contd.*

that there was a trade carried on in England, because the contracts were made in England. The making of a contract in such a business as this is the whole substance and essence of a trade."

Fry, L. J.—"The appellants have an agent or agents residing within the United Kingdom, who, according to my conclusion from the facts, have the receipt of the profits and gains arising from a business, not the receipt of profits and gains after they have been ascertained as such by the deduction from the gross income of the expense of their outgoings, but they have the receipt of profits and gains as a part of the gross sum which is paid to them. . . . They are not the less in receipt of profits and gains because they are in receipt of something else as well."

Also see *Lord Watson* in *Grainger v. Gough*. "In *Werle v. Colquhoun* the decision was based on the express ground that the foreign wine merchant exercised his trade in England, by making contracts there for the sale of his champagne through his English agent."

Grainger & Son v. Gough (*House of Lords*, 1896).

A French firm has an agent in England who obtains orders on commission. The French firm exercises its discretion as to executing the orders. The wine is sent from France to the purchasers at their expense and risk. Payments are usually (but not always) made direct to the French firm, which invariably issues the receipts. It was held (Lord Morris dissenting) that the French firm does not carry on a trade in the United Kingdom.

Exercising a Trade—Lord Watson.—"If their business consists in the sale of wines or other merchandise, neither the British nor the foreign merchant can, in my opinion, be said to exercise his trade beyond the limits of his own country so long as all contracts for the sale of their goods and all deliveries to the purchaser are made within these limits." *Lord Morris.*—"There can be no definition of the words 'exercising a trade.' It is only another mode of expressing 'carrying on a business,' but it certainly carries

SCHEDULE D (FOREIGNERS TRADING HERE)—*contd.*

with it the meaning that the business or trade must be habitually or systematically exercised, and that it cannot apply to isolated transactions. There is no special legal meaning to the words 'exercising a trade,' and it must be considered with regard to what could be its ordinary or popular meaning, and that must in each case depend on the facts of that particular case."

Contract—Lord Herschell.—"Unless something is done by the receiver of the order which amounts to an acceptance, there is no contract. It is clear the appellant in receiving an order did not accept or purport to accept it on Roederer's behalf so as to constitute a contract, and that they had no authority to do so. . . . In all previous cases contracts have habitually been made in this country. Indeed, this seems to have been regarded as the principal test whether trade was being carried on in this country."

Delivery—Lord Herschell.—"The customer pays the cost of package and carriage from the cellars and takes all risks. The delivery to the purchaser, therefore, takes place in France."

Agent in receipt of profit or gains—Lord Herschell.—"I cannot adopt the view that the words 'having the receipt of any profits or gains' (in s. 41 Income Tax Act, 1842, see pages 6 and 7) control the word 'receiver' only, and not the words 'factor' and 'agent.' . . . In the case of a trade exercised in this country, I think any agent who received for the foreigner exercising such trade moneys which included trade profit, would be within the provisions of Section 41." *Lord Morris.*—"There is no reason why an agent should be chargeable who was not in receipt of profits or gains; but in the present case the appellants were in fact as agents of their principal, Roederer, in receipt of moneys which included profits and gains, and being so come within the operation of s. 41."

Contrast with Lord Davey.—" 'Having the receipt of any profits or gains' does not mean any part of the profits or gains, but the taxable profits or gains of any business."

SCHEDULE D (FOREIGNERS TRADING HERE)— *contd.*

Watson v. Sandie and Hull (High Court of Justice, 1898).

Squire & Co., foreign merchants, send goods to an English firm for sale on commission. The English firm sells them and submits accounts of the sale to Squire & Co. to whom they guarantee payment. It was held that the foreign firm exercises a trade here. *Grantham, J.*—"The goods are only consigned to the order of Sandie & Hull here by Squire & Co. (the foreign firm), but the goods remain the goods of Squire & Co. . . . The goods are all in England before any dealing with them takes place in this country, and it cannot be denied that there is trading carried on in this country in reference to those goods."

Turner (Leicester) Ltd. v. Rickman (1898).

A foreign company has an agent here, but all orders must be submitted to the company before being accepted. When the order is approved the agent is empowered to accept it, and the goods are sent to him for transmission to the purchasers. It was held that the contracts are made in this country and that the foreign company exercises a trade here. *Wills, J.*—"Even if the contract had been made in New York, a man, when he does deliver the goods in this country, exercises a trade and carries on a business." *Bruce, J.*—"The appellant (Turner, Ltd.) must satisfy us that all *contracts* for the sale and all *deliveries* of merchandise to customers were made in a foreign country."

Crookston Bros. v. Furtado (Court of Exchequer, Scotland, 1910).

(This Scotch case is not in line with other decisions. See the dicta set out below and in the succeeding case.)

The appellants acted as agents for the sale of phosphates on behalf of a French company. It was held (1) that payment and delivery took place abroad; also (2), by the majority of the Court, that the fact that the contracts were made in this country between the purchasers and such independent commission agents as the appellants did not constitute trading here by the French company.

SCHEDULE D (FOREIGNERS TRADING HERE)—
contd.

(3) The Court agreed in holding that the Appellants were not "agents having the receipt of profits" within the meaning of the Income Tax Act, 1842, s. 41, as payment was usually made by crossed cheque in favour of the French company, and even when the cheque was drawn in favour of the agents it was endorsed by them and forwarded to the French company.

(1) *Lord Salvesen*.—"The phosphates are shipped by the company from Algeria in vessels chartered for the company on the instructions of the Appellants, and bills of lading are granted by the masters in favour of the company as shippers deliverable unto order or their assigns. These bills of lading reach Glasgow at least a week before the arrival of the goods and are at once endorsed by the Appellants to the purchasers and handed over to them in exchange for three-fourths of the price in the invoice. . . . It is plain that the bills of lading were always delivered to the English purchasers while the vessels conveying them were still at sea. The legal property in the goods accordingly passed to the purchaser when he received the bills of lading."

(2) *Lord Ardwall*.—"They had no representative in this country such as Erichsen was in the case of *Erichsen v. Last* (see page 229). I cannot hold that the word 'representative' covers independent commission agents such as the Appellants in this case. It would cover a manager or a servant of the company, but not independent agents who do commission business for their own profit and under a limited authority." *Lord Salvesen*.—"A difficulty is undoubtedly occasioned by certain judicial dicta, some of which may be construed as meaning that if contracts for the sale of merchandise are habitually made in this country either by the foreign merchant himself or by a commission agent on his behalf, and delivery takes place in this country, then the foreign merchant is exercising a trade on the profits of which he is liable to assessment here. In none of the decided cases, however,

SCHEDULE D (FOREIGNERS TRADING HERE)— *contd.*

do I find that only these two elements were present. . . . Were the contracts habitually made in this country? In my opinion this question fails to be answered in the affirmative. In law, I do not doubt that where a British agent makes a contract of sale with a British subject within the country that sale becomes instantly binding on the company, provided the agent has authority so to contract and has acted within the limits of his authority. I cannot help observing, however, that it appears to me that undue importance has been attached by some of the English judges to the place where, in legal sense, the contract is made when considering its bearing on the question whether a foreign firm has exercised a trade in this country. . . . I am fully aware that my opinion runs counter to some dicta of the English judges and especially to the dictum of *Lord Justice Brett* in the case of *Erichsen* (see page 230), which was quoted without disapproval in the subsequent case of *Grainger and Son* (see page 233), and from which it might be inferred that the fact that a foreign company makes its contracts in England for the sale of its goods there, even when it does so through an agent, is of itself sufficient to constitute an exercise of trade by a foreign company so as to render it amenable to assessment under our fiscal law." *Lord Dundas (minority judgment)*—"I consider that it follows by necessary implication from the opinions delivered by the Lords in *Grainger v. Gough* that if contracts are concluded in this country, that fact alone will be sufficient to constitute an exercise of trade here."

(3) *Lord Ardwall*.—"I think it clear that the contemplation of the statute was that receivers, factors, or agents should only be liable to pay income tax for their principals when they had in their own hands the means of recouping themselves by having the receipt in money of profits and gains belonging to their principals."

Macpherson and Co. v. Moore (*Court of Session, Scotland, 1912*).

The firm acted as agents to a foreign company, orders

SCHEDULE D (EXTENT OF SCHEDULE)—

being obtained by them and accepted by them after approval by the company. Delivery and payment were both made in this country. It was held that the foreign company exercised a trade in the United Kingdom and that the agents are assessable in respect of the profits accruing to the company therefrom.

Lord President.—"In this case there is no controversy that there is in the hands of the agent principals' money, and therefore there is no difficulty of the class which wrecked the case of *Crookston* against the Inland Revenue. . . . The argument was used that no branch of Peltzer et Fils had been opened in the United Kingdom. Personally, that argument would, or would not, move me in a case of this kind, according to the description of the article dealt in."

EXTENT OF SCHEDULE.

The duties shall extend to every description of property or profits not contained in Schedules A, B, or C, and to every description of employment or profit not contained in Schedule E, and not specially exempted from the said duties, and shall be charged annually on and paid by the persons, bodies politic or corporate, fraternities, fellowships, companies or societies, whether corporate or not corporate, receiving or entitled unto the same, their executors, administrators, successors and assigns respectively. (*Income Tax Act, 1842, s. 100.*)

WHAT CONSTITUTES PROFIT AND WHAT IS TRADING?

Rate on coal imported.

Attorney-General v. Black (*Court of Exchequer, England, 1871*).

It was held that a rate on coal brought into Brighton, levied under an Act of Parliament and used by the Corporation for the general purposes of the town, is liable to income tax. It was not decided whether the assessment was correctly made under Schedule D, or should have been made under Schedule A as a profit arising from a

SCHEDULE D (TRADING AND PROFIT)—

hereditament. *Kelly, C.B.*—"It cannot be argued that this rate is a rate by which Brighton taxes herself in this same sense as she taxes her householders for the maintenance of the poor, etc., but it is an annual profit to which the Corporation of Brighton is entitled, and is therefore on every construction of the words of the Income Tax Acts, liable to duty under those Acts."

Betting.

Partridge v. Mallandaine (High Court of Justice, 1886).

It was held that the profits of a person who systematically bets at race meetings are liable to income tax, whether the calling is viewed as illegal or not. *Denman, J.*—"These two persons are persons who in partnership attend races and systematically and annually carry on that business or pursuit so as to make profits. . . . I do not think 'employment' necessarily means a case in which a person is set to work by other persons to earn money. A man may employ himself to earn money in such a way as to come within that definition, but I think the word 'vocation' is a still stronger word. . . . I do not think the fact that it is unlawful can be set up against the rights of the revenue in respect of the profits that are made."

Buying but not selling.—See *Sulley v. Attorney-General*, page 229.

Sale of Assets.

Northern Assurance Co. v. Russell (Court of Exchequer, Scotland, 1889).

It was held that when the company sells, in the course of its business, its investments for more than it gave for them, the difference should be included with its assessable profits and gains.

Scottish Investment Trust Co. v. Forbes (Court of Exchequer, Scotland, 1893).

It was held that a company, whose memorandum of association gives it powers to sell or exchange its assets, is liable to assessment on profits from realising its

SCHEDULE D (TRADING AND PROFIT)—*contd.*

investments at enhanced prices. Depreciation in the value of stock not sold may not be considered. *Lord President.*—"From the structure of the memorandum it appears that the varying the investments, and turning them to account, are not contemplated merely as proceedings incidentally necessary, for they take their place among what are the essential features of the business."

Assets Co., Ltd. v. Forbes (Court of Exchequer, Scotland, 1897).

The company was formed to acquire the outstanding assets of a bank, in order that the liquidator of the bank might be able to discharge its liabilities forthwith. The company was assessed to income tax in respect of sums obtained from the realisation of assets in excess of the value of such assets as stated in the liquidator's books. It was held that the case stated by the Commissioners did not contain materials for a decision as to the correctness of the assessment, which was therefore ordered to be discharged. The following extracts from the judgments are of permanent interest. *Lord Trayner.*—"If it were established or assumed that the company had made a gain or profit by the realisation of certain stocks or other investments which is held as part of its capital, a somewhat difficult question would arise, namely, whether, *looking to the character and constitution of this company, the purpose for which it was formed, and the peculiar transaction under which the assets in question were made over to it*, the present case was ruled by *Northern Assurance Co. v. Russell*, and *Scottish Investment Trust Co. v. Forbes.*" *Lord Young.*—"I have really no doubt that any person or any company *making a trade of purchasing and selling investments*, will be liable upon any profit which is made by that trade. It is quite an intelligible business, just as intelligible as a trade consisting in the purchase and sale of goods in the ordinary trade of a merchant or shopkeeper. . . . But it is another proposition altogether that, where that is not a trade, a gain or loss upon the purchase or re-sale

SCHEDULE D (TRADING AND PROFIT)—*contd.*

of property comes within the meaning of the Income Tax Acts. To the even proper traders, if proper traders sell their old premises and buy new ones, and sell the old premises at a higher price than they paid for them, investing in the purchase price of the site and the erection of new premises the price which they get, I should say it was a totally untenable proposition that anything in excess of what they had paid for the old premises is income within the meaning of the Act. I do not think it is at all. It is no more so in the case of a trader's income than in the case of a private individual selling his house at more than he had paid for it, or selling his carriage or pictures at more than he paid for them. That is not income in any sense ; while a dealer in pictures, like a dealer in goods or a dealer in the buying and selling of horses, who made it a trade, would then come within the region of income tax. . . . The proposition that where anybody who purchases a doubtful debt and makes more than he paid for it—one purchase, he not being a trader in that kind of thing—that that is income, is, I think, a proposition which cannot be sustained."

Californian Copper Syndicate v. Harris (Court of Exchequer, Scotland, 1904).

After acquiring and working certain property, a company re-sells it for fully paid shares in the purchasing company, this course of business being in accordance with the purposes shown in its memorandum of association. It was held that the company should be assessed on the difference between the price given for the property and the value of the shares received therefor. *Clerk, L. J.*—"Where the owner of an ordinary investment chooses to realise it, and obtains a greater price for it than he originally acquired it at, the enhanced price is not profit assessable to income tax. But enhanced value obtained from realisation or conversion of securities may be so assessable, where what is done is not merely a realisation or change of investment. but an act done in what is truly the carrying

SCHEDULE D (TRADING AND PROFIT)—*contd.*

on or carrying out of a business. The simplest case is that of a person or association of persons buying and selling lands or securities speculatively, in order to make gain, dealing in such investments as a business, and thereby seeking to make profits. There are many companies which in their very inception are formed for such a purpose—where they make a gain by a realisation, the gain is liable to be assessed to income tax. The question is—Is the sum of gain that has been made a mere enhancement of value by realising a security, or is it a gain made in an operation of business in carrying out a scheme for profit-making? . . . The turning of investment to account was the essential feature of the business, speculation being among the appointed means of the company's gains."

As to the facts in this case. Clark, L.J.—"This Syndicate was formed with a capital of £30,000, *inter alia*, to acquire copper and other mines, and certain mines named in particular, and to prospect and explore for the purpose of obtaining information, and to enter into treaties, contracts, and engagements with respect to mines, mining rights, etc. It was also to carry on mercantile, commercial, financial, and trading businesses, and to work minerals, to establish and form companies for such objects, to subscribe for, purchase, or otherwise acquire, shares or stock of any company, and accept payment in shares for property sold or business undertaken or services rendered, and to hold, sell, or dispose of the same, to promote companies for the purpose of acquiring the undertaking, property and liabilities of the company. These are shortly some of the main purposes of the company, and they certainly point distinctly to a highly speculative business, and the mode of their actual procedure was in the same direction. Of the £28,332 realised by shares which were subscribed for, £24,000 was invested in a copper-bearing field in the United States, and the balance was spent in development of the field, and in preliminary and head office expenses. The company were then successful in

SCHEDULE D (TRADING AND PROFIT)—*contd.*

selling the property, £300,000 in fully paid-up shares being given by the Fresno Company for the property. . . . I feel compelled to hold that this company was in its inception a company endeavouring to make profit by trade or business, and that the profitable sale of its property was not truly a substitution of one form of investment for another. *It is manifest that it never did intend to work this mineral field with the capital at its disposal.* Such a thing was quite impossible. Its purpose was to exploit the field, and obtain gain by inducing others to take it up on such terms as would bring substantial gain to themselves."

Lord Trayner.—"I am satisfied that the Appellant company was formed in order to acquire certain mineral fields or workings—not to work the same themselves for the benefit of the company, but solely with the view and purpose of re-selling the same at a profit. The properties were bought for £24,000, leaving only a share capital of less than £6,000—a capital quite inadequate to enable the company to work their minerals and bring them to market."

As to the price being paid in shares. Lord Trayner.—"A bargain is realised when the seller gets the price he has bargained for. No doubt here the price took the form of fully paid-up shares in another company, but if there can be no realised profit, except when that is paid in cash, the shares were realisable and could have been turned into cash, if the Appellants had been pleased to do so. I cannot think that income tax is due or not according to the manner in which the person making the profit pleases to deal with it. Suppose, for example, a seller made a profit on a trade transaction, but leaves the price (including the profit) in the hands of the buyer at so much per cent. interest. That he so deals with it, rather than take the cash into his own pocket, would not affect the claim of the revenue for the tax payable on the profit. No more, in my opinion, does it affect the liability for the tax that the Appellants left their profit in the hands of the company they sold to and took the company's shares as their voucher."

SCHEDULE D (TRADING AND PROFIT)—*contd.*

Hudson Bay Co., Ltd. v. Stevens (Court of Appeal, 1909).

The company were granted certain lands by the Crown as part of the return for surrendering their territory and rights of government. It was held that no assessment may be made in respect of the proceeds from the part of these lands sold by them. *Master of the Rolls*.—"The real question is whether this money can be regarded as profits derived by the company from carrying on a trade or business. In my opinion it cannot. The company are doing no more than an ordinary landowner does who is minded to sell from time to time, as purchasers offer, portions suitable for building of an estate which has devolved upon him from his ancestors. I am unable to attach any weight to the circumstance that large sales are made every year. This is not a case where land is from time to time purchased with a view to re-sale." *Farwell, L. J.*—"A landowner in England may establish a game farm on part of his estate and make profits thereby which would be liable to income tax, and he may also sell parts of his estate for building purposes, but his trade as a game farmer does not bring his sales as a landowner within the Income Tax Acts; and I see no difference in this respect between his position and that of the company. Again, a landowner may lay out part of his estate with roads and sewers and sell it in lots for building, but he does this as owner, not as land speculator."

Tebräu (Johore) Rubber Syndicate, Ltd., v. Farmer (Court of Session, Scotland, 1910).

A syndicate formed to acquire rubber estates sold the whole of its assets to a new company formed for the purpose. It was held that there was no evidence that it was part of the trade of the syndicate to purchase and sell lands and, therefore, that there was no liability to tax in respect of the transaction. *Lord Salvesen*.—"The company was formed primarily to acquire and develop a certain estate mentioned in the Memorandum and any other estates suitable for the cultivation of rubber; and

SCHEDULE D (TRADING AND PROFIT)—*contd.*

to carry on the business of developing and cultivating the said estates. No doubt power was also taken to sell any part of the undertaking and property of the company; and I assume that the promoters of the syndicate had in view from the first that it might become expedient to do so; but I am unable to infer from this fact, taken along with the ultimate sale of the entire assets to a new company, that it was part of the trade of the Syndicate to purchase and sell lands." *Lord Johnston*.—"Although from the name of the company one might have a certain amount of suspicion that the real object of the company, whatever its ostensible object was, was merely to turn over the property to another company, its prospectus has been drawn in such terms as not to justify that conclusion without something more, because its terms—and I may add what follows upon those terms—really involve the commencing of this company's life as an original rubber-production company."

Annuity.

Duncan's Executors v. Farmer (Court of Exchequer, Scotland, 1909).

From a fund of the Church of Scotland, exempted from income tax as being applied to charitable purposes, an annuity is paid to a retired minister on condition that he shall no longer act as a minister. It was held that the income should be charged on the minister under Schedule D and not under Schedule E. *Lord President*.—"As to inapplicability of Schedule E.)—"I have never been able to see how it could possibly be said to be in respect of his office, when the whole reason it was given to him was that he was no longer in office. . . . I do not think that it can be said to be in respect of his office, because the moving consideration was that some time previously, and as a historical fact, he had held an office." (As to applicability of Schedule D.)—"I have been equally unable to see why it is not chargeable as an ordinary annuity under Schedule D. Mr. Duncan is not a charitable institution.

SCHEDULE D (TRADING AND PROFIT)—*contd.*

Accordingly Section 105 (page 40) does not apply directly to him."

Golf Club.

Carlisle and Silloth Golf Club v. Smith (Court of Appeal, 1913).

The club is bound by the terms of its lease to allow visitors to play on its course at certain fees. It was held that the amount by which the visitors' fees exceed the expense attributable to them is profit liable to assessment. *Master of the Rolls*.—"It seems to me that there is a real difference between moneys received from members and applied for the benefit of members, and moneys received by the club from strangers. I cannot draw any distinction between gate-moneys, which might be, and I believe sometimes are, received by a golf club, and green moneys. In each case the club would be assessable." *Buckley, L. J.*—"The adventure of maintaining golf links and charging for the use of them is an 'adventure or concern in the nature of a trade.' If other conditions therefore are satisfied, the club are, I think, assessable under the First Rule of Schedule D. But it is, I think, unnecessary to determine whether that is so or not, for if it were not a 'concern in the nature of trade,' yet, other things being satisfied, the club would be assessable under the Sixth Rule."

Supplying Steam Power.—See *Armitage v. Moore*, page 254.

Guaranteed Interest on Expropriation.

Pretoria-Pietersburg Railway Co., Ltd., v. Elwood (Court of Appeal, 1908).

The South African Republic guaranteed to the railway company interest at 4 per cent. on its share capital. During the South African War the line was seized and worked by the British Military Authorities; and at the end of the war the British Government, in the exercise of a right formerly held by the South African Republic, expropriated the railway for a capital consideration, and also

SCHEDULE D (TRADING AND PROFIT)—*contd.*

paid the arrears of "interest." It was held that the "arrears of guaranteed interest on capital" constituted revenue to the company, which should be assessed for the last year of its working on its average profits, *i.e.*, on one-third of the sums now paid as arrears of interest for the three previous years less the expenses incidental to those years.

Uncompleted Transaction.

Furtado v. Cardonald Feuing Co., Ltd. (Court of Session, Scotland, 1906).

A land development company purchased land and built houses thereon. Over the property occupied it created feu-duties which were sold. The land and houses continued to be the property of the company. It was held that liability to income tax in respect of the sale of the feu-duties could not be determined without taking into account some part of the cost of the houses over which, as well as over the land, the feu-duties were created. It seemed that such liability could not be determined until the property was sold.

Foreign Taxation.

Stevens v. Durban-Roodepoort Gold Mining Co., Ltd. (1909).

It was decided that the tax paid in the Transvaal by an English company, on their produce there, is allowable as a deduction from the profits of the year in which it was paid, and not from the average profits on which the assessment falls to be made for that year. The deduction would, therefore, operate towards the reduction of the assessments of each of the three years following that in which the expense was incurred.

Insurance Companies.

Imperial Fire Insurance Company v. Wilson (In the Exchequer, England, 1876).

No deduction is allowed from the profits of a Fire Insurance Company in respect of "unearned premiums" *Kelly, C.B.*—"The only mode in which you really can say

SCHEDULE D (TRADING AND PROFIT)—*contd.*

what is the net profit is by taking on the one side the actual receipts, and on the other side the actual expenditure or disbursements ; all that remains is, at least for the time, profit."

General Accident, Fire and Life Assurance Corporation v. M'Gowan (House of Lords, 1908).

No deduction was allowed from the profits of this company (which carried on the business of fire, sickness, accident and guarantee insurance) in respect of estimated losses on unexpired risks. *Lord Chancellor*.—"In my opinion there is one sufficient reason for rejecting this (the company's) contention. It is not found as a fact that $33\frac{1}{3}$ per cent. does represent the real value of the risks that run on into 1904 in respect of premiums received in 1903. . . . If I am to conjecture I should incline to the view that this percentage is very far from the proper figure. For, if this estimate be accepted, then the total profit of this company, making certain deductions, was £15,338, whereas we know that for its own purposes the total profit, after the same deductions, was treated by the company as £62,850."

Sun Insurance Office v. Clark (House of Lords, 1912).

It was held that the company is legally entitled to an allowance considered proper by the commissioners in respect of the annual outstanding liability for unexpired fire insurance risks. *Lord Chancellor*.—"It appears you cannot base the assessment of income tax upon the actual facts of the business done and actual pecuniary results of it in the case of Fire Insurance companies who take single premiums to cover risks for a year or for more years. If that be so, it follows that, in assessing such Fire Insurance companies, you must proceed wholly or in part by estimate. An estimate being necessary, and the arriving at it by in some way using averages being a natural and probably inevitable expedient, the law, as it seems to me, cannot lay down any one way of doing this. *It is a*

SCHEDULE D (TRADING AND PROFIT)—*contd.*

question of fact and of figures whether what is proposed in each case is fair both to the Crown and to the subject.

. . . (One) method is to carry forward annually at the close of the year a percentage of the premium income in order to allow for unexpired risks. It has no pretensions to being precise. I can easily imagine cases in which an actuary could show it was misleading. But if it comes nearer to the truth than any other method in a particular case, I do not understand why it should not be adopted.

. . . (This) method has been examined by the Commissioners, and is stated to be right in this case. The surveyor's point was that no allowance or deduction at all ought to be made, because he said the proper method according to law was (another) method. He did not prove, or try to prove, that it was fair in this case. . . . There is no rule of law as to the proper way of making an estimate. There is no way of estimating which is right or wrong in itself. It is a question of fact and figure whether the way of making the estimate in any case is the best way for that case. . . . I am equally anxious that your Lordships should not be supposed to have laid down that the method applied in the present case has any universal application. If the Crown wishes in any future instance to dispute it, they can do so by evidence, and it is not to be presumed that it is either right or wrong."

Last v. London Assurance Corporation (House of Lords, 1885).

An Insurance Company carrying on the business of fire, marine and life insurance, keeps separate accounts and funds for each branch. The dividends are declared out of a general account which includes the profits or loss of all branches. Held :—(1) That the three branches must be assessed as one business. (2) That additions to the life fund out of the annual receipts may be allowed as deductions. (3) That the assessments should include bonuses, etc., to participating policy-holders. *Day, J.*—(1) " Although the funds and accounts are naturally and

SCHEDULE D (TRADING AND PROFIT)—*contd.*

under compulsion of law kept separate, the business is substantially one business carried on by one corporate person.” (2) (On distinction from *Imperial Fire Co. v. Wilson.*) “Fire insurances run out in all their incidents in one year, each payment of premium representing a thoroughly fresh transaction. In Life insurance each year’s premium has relation to the whole duration of the life or risk, and every year’s premium has to be set aside and capitalised for payment of the future debt; in no sense can the Life Fund as such be deemed to represent profit.” *Lord Blackburn.*—(3) “The profits of the life branch should be calculated on the principle that whatever profit was made should be assessed, though the corporation had bound themselves to pay it, or part of it, to the policy-holders.” See also *Lord Watson* in *Styles v. New York Life Insurance Co.* “The London Assurance Corporation was a proprietary office, or, in other words, the Corporation and its shareholders formed a body quite distinct in personality and interest from the insured. A member of the Corporation might effect an insurance with it, but that circumstance could neither enlarge nor diminish his rights as a partner.”

Scottish Union and National Insurance Co. v. Smiles
(*Court of Exchequer, Scotland, 1889*).

Case brought as to the correct basis of assessments on a company undertaking Life and Fire Insurances. *Lord President.*—“(1) The gains of a company carrying on both businesses must be massed together as one undivided income assessable under Case I, Schedule D. (2) The interest of investments which has not suffered deduction of tax at its source must be taken into account in ascertaining the company’s assessable profits. (3) Seeing that fire insurance policies are contracts for one year only, premiums received for the year of assessment, or on an average of three years, deducting losses by fire during the same period and ordinary expenses, may be taken as profits and gains without taking into account the balance

SCHEDULE D (TRADING AND PROFIT)—*contd.*

of annual risks unexpired at the end of the financial year of the company. (Now see *Sun Insurance Office v. Clark*, page 247). (4) This rule is not applicable to the life business. The profits can be ascertained only by actuarial calculations."

Gresham Life Assurance Society v. Styles (House of Lords, 1892).

It was held that annuities paid by a life insurance society, under contract, are not paid out of profits or gains within the meaning of Case I, Rule IV, Schedule D, and that the assessment on the society should therefore be exclusive of such payments. *Halsbury, L.C.*—"It would be an extraordinary thing to suggest that, where a business consists of granting annuities, it is to be taxed upon a different principle from any other commercial concern, and no one could doubt that, in any other commercial concern, the cost of the thing sold to the trader is one of the expenses incident to the carrying on of the trade. . . . The whole point seems to me to depend upon the words 'out of profits and gains.' Profits and gains must be ascertained on ordinary principles of commercial trading and I cannot think that the framers of the Act could be guilty of such confusion of thought as to assume that the cost of the article sold to the trader, which he in turn makes his profit by selling, was not to be taken into account before you arrived at what was intended to be taxable profit." *Lord Watson*.—"An annuity to the widow of a deceased partner, interest on capital advanced by a partner, or upon money borrowed for the purposes of the business, are truly payable out of profits earned, and therefore ought not to be deducted in estimating the income yielded by the business. But the business of the Appellants consists in employing their trading capital to pay annuities, as the counterpart of the consideration given by the annuitant, and the annuities are payable out of stock and not out of business profits." (This case overruled *Mersey Loan and Discount Co. v. Wootton*, 1887.)

SCHEDULE D (TRADING AND PROFIT)—*contd.*

Note.—The point of this decision is that the annuities paid were part of the trade expenses which must be set against the company's receipts *before* the amount of profit (*i.e.*, the balance) could be ascertained. Such annuities could not, therefore, be regarded as paid out of profit. (A company whose gross receipts are £1,000 and whose expenses are £800, has a profit of £200, and no part of the £800 can be said to be paid out of the £200.) This matter arose in 1886, and, before it was finally decided in the House of Lords as stated above, the Customs and Inland Revenue Act, 1888, s. 23 (see page 99) provided for the deduction of tax from interest and annuities not paid out of profits, and for the accounting of the tax to the Revenue.

Styles v. New York Life Insurance Co. (House of Lords, 1889).

The sole membership of a mutual life insurance company lies in the holders of participating policies, although business is also done with non-participating policy-holders. The annual surplus on the whole business is divided between the members by reduction of their premiums or additions to the sums insured. It was held (by a majority of 4 to 2 in the House of Lords) that the portion of the surplus which arises from the contributions of the members must not be included in the assessment. *Lord Watson.*—“The main and, to my mind, essential difference between *Last's* case (see page 248) and the present consists in the fact that, in this case, the policy-holders are not outsiders because they and they alone are members of the company. In *Last's* case the insured and the corporation stood together in no other relation than that of creditor and debtor.” *Lord Bramwell.*—“There were in that case two bodies (the shareholders and the assured). According to the construction of the New York Life Insurance Co., insurance by means of a participating policy is the only possible qualification for membership, and as soon as it is effected the insured is invested with all

SCHEDULE D (TRADING AND PROFIT)—*contd.*

the rights and becomes subject to all the liability of a partner. The individuals insured, and those associated for the purpose of receiving their dividends and meeting policies when they fall in, are identical, and I do not think the complete identity can be destroyed or even impaired by their incorporation. The corporation is merely a legal entity which represents the aggregate of its members, and the members are its participating policy-holders. When a number of individuals agree to contribute funds for a common purpose, and stipulate that their contributions, so far as not required for that purpose, shall be repaid to them, I cannot conceive why they should be regarded as traders, or why contributions returned to them should be regarded as profits."

Equitable Life Assurance Society of United States v. Bishop (Court of Appeal, 1899).

A life insurance society pays a dividend of 7 % to its members, and any profits remaining over are distributed amongst the participating policy-holders. The latter are not identical with the members, and the company also issues non-participating policies on which no surplus is payable. It was held that all the profits are assessable. *Darling, J. (in the High Court)*.—"It appears to me that here there was an independent distinct body, which was the company, independent of and distinct from the policy-holders." *Collins, L. J.*—"The principle of it is that where you have this division between a company and policy-holders who are not members of the company, then these sums are not part of the expenses of earning the profits but are themselves the profits earned."

Edinburgh Life Assurance Co. v. Lord Advocate (House of Lords, 1909).

A life assurance company suffers tax by deduction from its income from investments, which exceeds its profits. It was held that annuities which were charged on the whole funds of the company may be regarded as paid out of the taxed income as far as it will reach. *Lord*

SCHEDULE D (TRADING AND PROFIT)—*contd.*

Atkinson.—"It cannot be disputed that the annuities, though not exclusively charged upon this taxed income, are payable out of it, in the sense that they are charged upon it, may legitimately and properly be paid out of it, and can be paid out of it in fact, as it is ample to meet them." *Lord Gorell*.—"In the case of a business like the appellants', and taking into account the language and object of the Acts, it seems to me that if the annuities are made payable out of the interest, dividends and rents charged with the tax, it is immaterial whether the money to pay them is taken out of the general till of the company or not, provided that it does not exceed the amount of income on which tax is charged."

Also see cases under **Interest**, page 84, etc.

Trading requires two parties.—See *Dublin Corporation v. McAdam* and other cases under **Schedule A**, No. III, *Waterworks*, page 169, and *Gasworks*, page 168.

Also see cases under *Insurance Companies*, pages 248, 251, 252.

APPLICATION OF PROFITS IMMATERIAL.

In addition to the cases which follow, see—

In re Glasgow Corporation Gas Commissioners (page 168). *Dublin Corporation v. McAdam* (page 170). *Harris v. Corporation of Irvine* (page 171). *Mersey Docks and Harbour Board v. Lucas* (page 173). *Paddington Burial Board v. Inland Revenue* (page 174). *Portobello Town Council v. Sulley* (page 176). *Imperial Continental Gas Association v. Nicholson* (page 214).

The Trustees of Psalms and Hymns v. Whitwell (High Court of Justice, 1890).

It was held that the distribution of the profit of a hymn book among widows and orphans does not exempt it as an annual payment under s. 105, *Income Tax Act, 1842*. *Charles, J.*—"It appears to me that these profits and gains, trade profits which are ordinary trade profits made by the sale of these books, certainly cannot be regarded as 'yearly interest' paid to the person who makes them; and in interpreting the words 'or other annual payment' in

SCHEDULE D (APPLICATION OF PROFIT)—*contd.*

Section 105 (see page 40) I must adopt, it seems to me, the usual rule and read those words as 'other annual payment *ejusdem generis* with interest.' "

Webber v. Corporation of Glasgow (Court of Exchequer, Scotland, 1893).

The corporation contended that annual profits applicable to public purposes of the burgh were not assessable. The Counsel for the Corporation admitted in Court that he could state no argument in support of this contention.

Armitage v. Moore (High Court of Justice, 1900).

The trustee of a business assigned to creditors abandoned one portion thereof, but continued to supply steam power at a profit, such profit being paid to the said creditors. It was held that the profit was assessable. *Darling, J.*—"If he had carried on all the business at a profit, he would have had to pay income tax; if he carries on a portion of it at a profit he must pay income tax. . . . A man who is making profit this year should not be heard to say, 'I am not making a profit this year because when I have got the money which you call profit I am going to pay some debts made many years ago.' "

(As to previous losses, see *Broughton & Co., Ltd. v. Kirkpatrick* under **Schedule A**, No. III, *Mines*, page 165.)

Religious Tract and Book Society of Scotland v. Forbes (Court of Exchequer, 1896).

The Society sells Bibles at a shop in Edinburgh, and makes profits. It was not allowed to set these profits against a loss made on the colportage of Bibles. *Lord President.*—"The legitimacy of the importation into the account of the colportage must depend entirely on whether it, as well as the shop, is a business, trade, or adventure carried on for commercial purposes and on commercial principles. . . . The methods of the colportage are not commercial methods. While I completely assent to the view that the establishment and conduct of the shops and the establishment and conduct of the colportage all rest

SCHEDULE D (APPLICATION OF PROFIT)—*contd.*

upon the same ultimate motive, yet at the same time the two operations seem to be essentially distinguished."

Lord Adam.—"If a party takes to selling books it does not matter to the Crown what his object is in doing so, whether it is to put profit into his own pocket, or having made profit, to expend that in charity or donation."

Grove v. Young Men's Christian Association (High Court of Justice, 1903).

A society carries on a restaurant at a profit. It was not allowed to set this profit against the expenses of educational classes, a gymnasium, etc., carried on in connection with its work for the improvement of young men. *Ridley, J.*—"The restaurant is carried on on the usual commercial principles (except that it is closed at 8 p.m., so as not to interfere with the meetings, and except that it has been and would be carried on irrespective of any profit being derived therefrom). Now I think that in that case there is a 'trade' being carried on. I cannot escape from the conclusion that the object is to carry that restaurant on as a trade consistently with the other objects of the Association. The Association would indeed carry it on even without a profit, with a view no doubt of benefiting the other objects of the Association; yet I think it is carried on as a 'trade.' It is conducted upon the usual commercial principles, and in that respect it seems to differ from the Educational classes, etc."

City of Dublin Steam Packet Co. v. O'Brien (High Court of Justice, Ireland, 1912).

The company raised money on mortgage for the purpose of carrying out a government contract, and, as required by Act of Parliament, paid certain of its profits into a sinking fund for the extinction of the debt. It was held that sums allocated to the sinking fund may not be set against the profits for purposes of assessment. *Palles, C.B.*—"The matter is placed outside the pale of reasonable argument by the decision of the House of Lords in the *Mersey Docks v. Lucas.*" (See page 173.)

SCHEDULE D (CASE I, RULES 1, 2, and 3)— CASE I.

Duties to be charged in respect of any trade, manufacture, adventure or concern in the nature of trade not contained in any other Schedule of this Act.

CASE I. RULE 1.—COMPUTATION.—Duty shall be computed on a sum not less than the full amount of the balance of the profits or gains of such trade, manufacture, adventure or concern, upon a fair and just average of three years ending on such day of the year immediately preceding the year of assessment on which the accounts of the said trade, etc., shall have been usually made up, or on the 5th April preceding the year of assessment, and shall be assessed, charged and paid without other deduction than is hereinafter allowed.

Provided that, where the trade, etc., shall have been set up and commenced within three years, the computation shall be made for one year on the average from the first setting up of the same. When the trade shall have been set up and commenced within the year of assessment, the computation shall be made according to the rule in Case VI. (*Income Tax Act, 1842, s. 100.*)

Interest included in profits under Case I. See *Smiles v. Australasian Mortgage & Agency, Ltd.*, and *Norwich Union Fire Insurance Co. v. Magee*, under **Interest**, page 83.

Interest assessed as such not to be included in profits and charged again. See *Clerical, Medical and General Insurance Co. v. Carter*, under **Interest**, page 86.

CASE I. RULE 2.—EXTENT.—Duty shall extend to every person, body politic or corporate, fraternity, fellowship, company, or society, and to every art, mystery, adventure or concern carried on by them respectively in the United Kingdom or elsewhere, except such adventures or concerns on or about lands, tenements, heritages or hereditaments as are directed to be charged in Schedule A.

CASE I. RULE 3.—INADMISSIBLE DEDUCTIONS.—In estimating the balance of profits and gains chargeable under Schedule D, or for the purpose of assessing duty thereon, no sum shall be set off or deducted from (or allowed to be set off) such profits and gains on account of any sum expended for repairs of premises occupied for the purpose of such trade, etc. ; nor any sum expended for the supply or repairs or alterations of any implements, utensils

SCHEDULE D (CASE I, RULE 3)—*contd.*

or articles employed for the purpose of such trade, etc., beyond the sum usually expended for such purposes according to an average of three years preceding the year in which such assessment shall be made ;

nor on account of any loss not connected with or arising out of such trade, etc. ;

nor on account of any capital withdrawn therefrom ;

nor for any sum employed or intended to be employed as capital in such trade, etc. ;

nor for any capital employed in the improvement of premises occupied for the purposes of such trade, etc. ;

nor on account or under pretence of any interest which might have been made on such sums if laid out at interest ;

nor for any debts, except bad debts proved to be such to the satisfaction of the commissioners (*also see below*) ;

nor for any average loss beyond the actual amount of loss after adjustment ;

nor for any sum recoverable under an insurance or contract of indemnity. (*Income Tax Act, 1842, s. 100.*)

Bad Debts.—In estimating the profits chargeable under Schedule D upon appeal or otherwise, it shall be lawful to estimate the value of all doubtful debts due or owing ; in case of bankruptcy, etc., of the debtor, the amount of dividend reasonably expected shall be deemed to be the value thereof. (*Income Tax Act, 1853, s. 50.*)

Inadmissible deductions.—See also *Cases I and II, Rule 1*, page 270.

Expenses alleged to be on account of capital.

Exhaustion of Capital, pit-sinking, etc.

In re Addie & Sons (In the Exchequer, Scotland, 1875).

No deduction was allowed on account of pit-sinking and depreciation of building and machinery (see subsequent legislation under **Depreciation**, page 63). *Lord President.*—"The making of a new pit is an expenditure of capital. Rule III, Case I, provides that no sum shall be set against profits or gains on account of any sum employed or intended to be employed as capital in such trade."

SCHEDULE D (CASE I, RULE 3)—contd.

Forder v. Handyside (In the Exchequer, Scotland, 1876).

No deduction was allowed in respect of the depreciation of building and plant. (See subsequent legislation under **Depreciation**, page 63.) *Kelly, C.B.*—"They are net profits before they begin to set it aside." (Reference was also made to Rule III as to the inadmissibility of any deduction for repairs beyond the sum expended on an average of three years preceding.)

Coltness Iron Co. v. Black (House of Lords, 1881).

The expense of pit-sinking was not allowed as a deduction from the profits of a mine.

Lord President (In Court of Exchequer, Scotland).—*As to Annuities* : "The general principle of the property and income tax to which effect is given by the statutes is, that everything of the nature of income shall be assessed, from what source soever it may be derived. Nor does it make any difference on the incidence of the tax that the income has been created by the sinking of capital, as in the case of the purchase of annuities, instead of being merely the natural annual product of an invested sum which remains unconsumed and undiminished by the consumption of the income which it yields. . . . When (a man) purchases an annuity he converts his whole estate into an income which represents no capital but that which he has paid away and exhausted to purchase the income. But the statute takes no heed of his exhausted capital, and makes no deduction from the actual amount of his income on that account." *As to diminishing capital.*—"In ascertaining the amount of net profits for the purposes of division, the state of the capital account necessarily affects the balance sheet. If any part of the capital is lost, or if, from the nature of the business, the capital employed can never be recovered or restored, that is an element of primary importance in fixing the financial condition of the company and the true amount of its net earnings. But the statute refuses to take an ordinary balance sheet, or the net profits thereby

SCHEDULE D (CASE I, RULE 3)—contd.

ascertained, as the measure of the assessment, and requires the full balance of profits, without allowing any deduction except for working expenses, and without regard to the state of the capital account or to the amount of capital employed in the concern, or sunk and exhausted, or withdrawn."

Earl Cairns (in the House of Lords).—"I am not prepared to say that under the words of the 5th and 6th Victoria, chapter 35 (*Act of 1842*), a mine-owner might not in some cases be entitled to an allowance in respect of the cost of sinking a pit by means of which pit the minerals are gotten which are the source of profit for the year in which the pit was sunk. I desire to reserve my opinion on that point until the question arises, but in the present case the question is altogether different. It is, as now explained, can a mine-owner write off and deduct from the gross earnings of his mine in a particular year a sum to represent that year's depreciation of all the pits in the mines whenever sunk. I am clearly of opinion that this cannot be done." *Lord Penzance.*—"If a man built a house or bought a house, he was intended to pay tax on the annual value of the house so long as it lasted." *Lord Blackburn.*—"The duties are to be assessed according to the rules in Schedule D, and consequently all the anxiously devised provisions for keeping the returns under Schedule D secret and confidential to be found from Section 100 to Section 131 are made in future to apply to returns for the concerns described in No. III of Schedule A, and any rule expressed as to the mode of computing the balance of the profits and gains which is not inconsistent with Schedule A, No. III, may perhaps be made in future to apply. . . . If the effect of Section 8 of 29 Vict. was to transfer cases in Schedule A, No. III, to Schedule D, mines would be reduced from a five-year period to a three-year period. I cannot think that this was intended or expressed."

This case overruled *Knowles v. Mc Adam* (*High Court of Justice*, 1877) in which the contrary had been held.

SCHEDULE D (CASE I, RULE 3)—*contd.*

Alianza Co. v. Bell (House of Lords, 1905).

No deduction was allowed from the profits of a nitrate manufacturing company, in respect of the exhaustion of the nitrate grounds. *The Master of the Rolls* referred to *Gillatt v. Colquhoun* (see page 271) and to *Edinburgh South Cemetery Co. v. Kinmont* (see page 175) as asserting that the principles governing the question of diminishing capital are the same under Schedule D and Schedule A. *Stirling, L. J.*—"A question has arisen whether in making such an assessment there ought to be deducted from the admitted receipts of the company any sum in respect of the cost price of the caliche worked up by the company in the course of each year. . . . *Primâ facie* the claim appears to be reasonable, for such an expense ought certainly to be deducted by a prudent trader from his gross receipts before he arrives at the amount of his profits for any particular period; but the answer on behalf of the Crown is that, however this may be, the deduction in question is forbidden by the terms of the Income Tax Acts itself. . . . It is clear that the law does not permit, as regards such assessments, all deductions which a prudent trader would make in ascertaining his own profits." *Lord Robertson.*—"Section 159 (see page 156) is never to be laid out of account in these instances, because in its express prohibition of an allowance being made for capital, it on the face of it refers to all the various cases under the various Schedules. Accordingly the argument that there is something peculiar to Schedule A in the principle fails before the universal *conspectus* which in express terms is given by Section 159 to this very principle."

Morant v. Wheal Grenville Mining Co. (High Court of Justice, 1894).

The general commissioners allowed a Cost-Book mining company to deduct from its profits the sums raised by a call on its shareholders for the sinking of new shafts, being of the opinion that Cost-Book companies have no capital. The Court held that the commissioners were wrong, and

SCHEDULE D (CASE I, RULE 3)—*contd.*

must consider whether the expense in question was a capital expense or not. *Wright, J.*—"Is the expenditure in respect of which a deduction is sought to be made, capital or not? That must be to a great extent, or may be to a great extent, a question of fact. One can very well imagine in cases of mines, where the minerals lay at shallow depths, and where it was necessary to open them from time to time frequently by shallow shafts that in those cases it might well be that the sinking of shafts would be properly treated as part of the ordinary working expenditure. On the other hand, you have a case, such as I suppose the present case is, where a large area of ground has been worked from one shaft, and it is apprehended that it will soon become impossible to work any further from that shaft, and a new mine, so to speak, must be opened by a new shaft altogether."

Bonner v. Basset Mines, Ltd. (High Court of Justice, 1912).

The expense of deepening the shaft of a mine in order to reach new lodes of ore was not allowed as a deduction from the assessable profits. *Horridge, J.*—"I think the evidence of the finding in the case is all one way, that the old mine had become practically if not wholly exhausted, and the Basset Mines, Ltd., by lengthening this shaft to the considerable extent they did were in effect opening up a new mine, so to speak, in the same way as they would have opened up a new mine if they had started a fresh shaft."

Loss of Loans.

English Crown Spelter Co., Ltd. v. Baker (High Court of Justice, 1908).

A zinc smelting company assisted, by loans, a second company formed to supply it with "blende." The latter company failed, and the moneys lent were lost. It was held that the loans were capital investments, and that the sums lost could not be deducted from the profits. *Bray, J.*—"It is impossible to look upon this as an ordinary business transaction of an advance against goods to be delivered.

SCHEDULE D (CASE I, RULE 3)—contd.

The Welsh company were in difficulty: they had great difficulties in opening the mine; they had to expend large sums of money for that purpose, and they applied to the Appellant Company to lend this money, and they lent them money."

Short-loan Interest.

Compare this case with *Moore v. Stewart and Lloyds*, page 280, and *Reid's Brewery v. Male*, page 274.

Anglo-Continental Guano Works v. Bell (High Court of Justice, 1894).

The London branch of a foreign company pays interest on money borrowed from its head-quarters abroad, and also on short loans obtained from bankers. The company agreed that the first mentioned interest may not be deducted from its profits for assessment, and it was held that the other interest is similarly inadmissible as a deduction. *Mathew, J.*—"What are intended to be assessed are the profits of the particular business, and those profits are to be ascertained in the ordinary way, without reference to the consideration as to whether or not a particular partner or all the partners are trading with borrowed capital."

See also comments on this decision in *Farmer v. Scottish North American Trust, Ltd.* (1911). *In the Court of Sessions, Scotland. Lord Johnston.*—"A foreign firm (The Anglo-Continental Guano Works) had a branch house in England, which was conducted on the footing of a separate business. The English house obtained short loans, or accommodations for the conduct of its business, from the foreign firm and from foreign bankers. I think the case may be relieved of any question regarding the advances by the foreign firm, for I think the Court regarded the foreign firm as really *eadem persona* with the English house. But as regards the advances from bankers, the case is truly *in pari casu* with the present. Though not binding on us, the authority is one which I must regard with all respect. But after carefully examining it, I am not satisfied with the reasoning of the learned judges who

SCHEDULE D (CASE I, RULE 3)—contd.

determined it." *Lord Salvesen*.—"That decision is not binding upon us, for it has never been approved in the House of Lords or, so far as I know, in any subsequent case; and it appears to me to conflict with the opinions of noble lords who decided the *Gresham* case (see page 250)."

In the House of Lords. Lord Atkinson.—"It only remain to refer to the case of *Anglo-Continental Guano Works v. Bell*, so much relied upon in argument. On close examination of this supposed authority, it will, I think be found that it does not apply to the present case so directly as seems to have been assumed. . . . What was decided in the case was that the sum paid for interest on these loans could not be deducted under Rule 3 (see page 257), on the ground that the money borrowed was employed as capital, and that this interest was a sum deducted for this capital; but the case was treated as if it were a case between partners engaged in a partnership business, one or all of whom is or are trading on borrowed capital. . . . It does not appear to me that the reasoning on which this decision is based can apply to a bank whose business is the borrowing and lending of money; or to an investment company whose business is conducted as is that of the respondents in the present case. (*Farmer v. Scottish North American Trust, Ltd.*).

Farmer v. Scottish North American Trust, Ltd. (House of Lords, 1911).

A deduction from profits was allowed in respect of interest on overdrafts paid to foreign bankers by an investment company, such interest being considered a charge for ordinary banking facilities and not interest on borrowed capital. The *Court of Session, Scotland*, disapproved of the decision in *Anglo-Continental Guano Works v. Bell*, and held that all interest on bank overdraft is chargeable as a trade expense in the trader's accounts. The judgment in the *House of Lords* was restricted to this particular case, however, and did not profess to overrule the *Anglo-Continental* case. (See judgments set out under that case.)

SCHEDULE D (CASE I, RULE 3)—*contd.*

In the Court of Session. Lord Johnston.—"It may be well said that if money is borrowed on a permanent footing, as from year to year, the capital of the concern is in a commercial sense enlarged thereby, and the business extended, whereas no commercial man would consider that his banking facilities were part of his capital, or the consideration he paid for them anything but an expense of his business. And, consistently with this, it is provided (First Case, Rule 4, see page 269) that 'in estimating the profits and gains arising, no deduction shall be made on account of any annual interest or any annuity or other annual payment payable out of such profits or gains.' It is true that this is a negative provision only. It does not say that interest which is not annual may be deducted. But the natural inference is that a distinction is drawn with intention, between interest which can be properly described as annual, though it may be paid at shorter terms, and interest which cannot be so described, but is casual or anything from day to day upwards, short of annual." *As to what constitutes annual interest.*—"Where the interest is payable in respect of an obligation having a 'trust of future time' it may be understood as annual, and where not, not."

In the House of Lords. Lord Atkinson.—"If one takes the case of an ordinary joint-stock bank, whose business consists in the daily or hourly borrowing of money from the customer who lodges money with it either on deposit or current account, for which the bank becomes the debtor, or of lending money to those whose bills or notes it discounts, or whose securities it takes in pledge, and daily, almost hourly, repaying in dribbles by the cashing of the lender's cheques the amount borrowed, then (according to the argument for the Crown), fluctuating day by day, if not hour by hour, is to be treated as capital employed in the trade. No reduction, moreover, is to be made in respect of the sums lent by the bank on the discount side of the business. Indeed, the Attorney-General, as I understood, admitted, as he was by the necessities of his

SCHEDULE D (CASE I, RULE 3)—*contd.*

argument obliged to admit, that the result would be the same in the case of a joint stock bank, which by its charter or articles was absolutely prohibited from increasing its capital. That simply amounts to this, that the word 'capital' must be held to bear a wholly artificial meaning differing altogether from its ordinary signification, although there is no context in the clause (Rule 3, see page 257) requiring that there should be given to it a meaning different from that which it bears in ordinary commercial transactions. . . . The interest is, in truth, money paid for the use or hire of an instrument of their trade as much as is the rent paid for their office or the hire paid for a typewriting machine. It is an outgoing by means of which the company procures the use of the thing by which it makes a profit, and like any similar outgoing should be deducted from the receipts, to ascertain the taxable profits and gains which the company earns. Were it otherwise they might be taxed on assumed profits when, in fact, they made a loss."

Purchase Money.

Royal Insurance Co. v. Watson (1897).

The company paid a large sum to the manager of another business it acquired, in commutation of a salary payable to him under the purchase agreement. It was held that this payment represented part of the purchase price of the business acquired, and might not be deducted from the profits assessed. *Lord Chancellor*.—"If it is established as a fact that the expenditure is capital, the statute determines that the expenditure cannot be deducted from the profits. . . . I, as a matter of fact, come to the conclusion that this was a part of the purchase money." *Lord Herschell*.—"The case is not necessarily the same as if this were a payment made to a person employed by the company for the purpose of determining his service, getting rid of him and substituting somebody else in his place, quite apart from any such agreement as existed in the present case between the Royal Insurance Company

SCHEDULE D (CASE I, RULE 3)—*contd.*

and the Queen Insurance Company—a mere part of an arrangement made between the company and one of their employees. I desire to say nothing to prejudice the decision if such a case arose.” *Lord Shand*.—“If this had been a case of voluntary agreement between the manager of an insurance company and the company for the payment to him of a salary for so many years, to last for a definite time, but with power to the company, at any time they might think fit, to terminate the service by making the payment at once of a capital sum, I think there would have been much force in the argument that such a payment might properly form a deduction from gross profits in striking the balance liable to income tax, and I should make the same observation as to a case in which there has been wrongful dismissal of a person having an engagement for a term of years and who succeeds in obtaining damages on that account. But this case seems to me to be entirely different.”

City of London Contract Corporation v. Styles (Court of Appeal, 1887).

It was held that the price paid for the unexecuted contracts of a business taken over by a company may not be deducted from its profits, being capital outlay.

For the remainder of this case see under **Interest**, page 99.

Gasworks purchased in a defective condition—see *Clayton v. Newcastle-under-Lyme Corporation*, under **Schedule A, No. III, Gasworks**, page 168.

Cost of obtaining capital.

Arizona Copper Co. v. Smiles (Court of Exchequer, Scotland, 1891).

A company pays a bonus on repaying borrowed capital, as required by contract. It was held that the bonus may not be deducted from the profits assessed. *Lord President*.—“It was paid in a lump sum as one of the considerations stipulated for a loan of capital employed in the completion of the works. . . . It appears to me,

SCHEDULE D (CASE I, RULE 3)—contd.

as a sum paid in return for a loan of capital, to be entirely heterogeneous to those outlays the deduction of which is permitted as being necessarily incidental to the earning of profits."

Texas Land and Mortgage Co. v. Holtham (High Court of Justice, 1894).

The expenses, such as brokers' commission, etc., incurred in issuing debentures, (the money so raised being lent out on mortgage), may not be deducted from the profits assessed. *Mathew, J.*—"The amount paid in order to raise the money on debentures comes off the amount advanced upon the debentures and, therefore, is so much paid for the cost of getting it, but there cannot be one law for a company that has sufficient money for its operations, and another for one which is content to pay for the accommodation."

Removal.

Smith v. Westinghouse Brake Co. (High Court of Justice, 1888).

It was held that the cost incurred in removing machinery from one manufacturing depot to a smaller depot is capital expenditure, and may not be deducted from the profits. *Charles, J.*—"I do not think it can be doubted that the expenditure of this £10,000 was capital expenditure, and if we come to that conclusion there is an end of the case."

Granite Supply Association v. Kitton (Court of Exchequer, Scotland, 1905).

It was held that no deduction may be made from the profits of a granite supply company in respect of expense incurred in removing granite and cranes from old works to new ones. *Lord President.*—"It seems to me to make no difference if, instead of having to buy a crane completely new, they had a crane at the old yard, but had a certain expense in order to put that up in the new yard." *Lord McLaren.*—"The cost of transferring plant from

SCHEDULE D (CASE I, RULE 3)—*contd.*

one set of premises to another more commodious set of premises is not expense incurred for the year in which the thing is done, but for the general interests of the business. It is said that this transference does not add to the capital value of the plant, but I think that is not the criterion. . . . Suppose a person is imprudent enough not to insure his premises or his goods, which can be insured, and they are burned down, and he has to replace the building, he could not be allowed to charge the new building against the income of the year, although the putting of it up does not add to the value of his property, but merely enables it to maintain its original value."

Improvements.

Highland Railway Co. v. Balderston (Court of Exchequer, Scotland, 1889).

No allowance was made to a railway company in respect of sums expended :—(1) in improving a newly-purchased section of the line, and (2) in substituting heavy rails and chairs for lighter ones. *Lord President.*—" (1) It is certainly part of the cost of acquiring that line to be wrought along with the main line. (2) When we come to the question of the alteration of the main line itself, it must be kept in view that this is not a mere relaying of the line after the old fashion ; it is not taking away rails that are worn out or partially worn out, and renewing them in whole or in part along with the whole line. That would not alter the character of the line ; it would not affect the nature of the heritable property possessed by the company. But what has been done is to substitute one kind of rail for another, steel rails for iron rails. Now that is a material alteration and a very great improvement on the corpus of the heritable estate, and, so stated, is surely a charge against capital."

Insurance Fund.

Inland Revenue v. Western Steamship Co. Ltd. (Court of Session, Scotland, 1907).

It was held that a shipping company may not charge

SCHEDULE D (CASE I, RULE 3 *contd.* and RULE 4) —

against its profits such sums as it sets aside to form an insurance fund to cover risks not insured with underwriters.

Concerns in Schedule A, No. III. See under *Streams of Water*, page 172, under *Markets*, page 174, and under *Cemeteries*, page 174.

Other deductions.—See under *Cases I and II, Rule, 1*, page 270.

CASE I. RULE 4.—INADMISSIBLE DEDUCTIONS.—Annual Interest.—In estimating the amount of the profits and gains arising as aforesaid, no deduction shall be made on account of any annual interest, or any annuity or other annual payment payable out of such profits or gains.

What is annual interest, etc.? See page 95.

Alexandria Water Co. v. Musgrave (Court of Appeal, 1883).

No deduction was allowed from the profits of an English company in respect of interest paid to debenture-holders residing in Egypt, where the company's property was situate. *Brett, M.R.*—"I do not deny that, assuming the company cannot get payment from the foreign debenture holder, there is a hardship. I am unwilling to give an opinion whether the foreign debenture-holder can be made to repay the company. I am unwilling to say that, because it seems hard to say that against the foreign debenture-holder, who is not here. . . . Whether the company, in paying the foreign debenture-holder, can or cannot deduct tax is immaterial."

Different concerns and allowance of part of rents.—Nothing herein shall restrain any person carrying on, either solely or in partnership, two or more distinct trades, manufactures, adventures, or concerns in the nature of trade, the profits whereof are chargeable under rules of Schedule D, from deducting or setting against the profits in one or more, the excess of the loss sustained in any other over the profits thereof, in such manner as where a loss shall be deducted from the profits of the same concern; or to restrain any such person from making separate statements thereof; or to restrain any such person renting a dwelling-house, part whereof shall be used by him for the purposes of any trade or concern or profession hereby charged, from deducting from the profits such sum, not exceeding

SCHEDULE D (CASE I, RULE 4; CASE II)—*contd.*

two-thirds of the rent *bonâ fide* paid for such dwelling-house with appurtenances as the commissioners shall, on consideration, allow. The commissioners have authority to allow such deductions as in other cases. (*Income Tax Act, 1842, s. 101.*)

General Hydraulic Power Co., Ltd. v. Hancock (High Court of Justice, 1913).

It was held that the annual value of premises owned by a trading concern and occupied by it for purposes of its business, should be charged as an expense in each year's accounts. It would be incorrect to ignore this charge until the average required by the Acts was struck, and then to deduct the present annual value from such average.

CASE II.

The duty to be charged in respect of professions, employments, or vocations not contained in any other Schedule of this Act.

CASE II. RULE 1.—Extent.—The duty shall extend to every employment by retainer in any character whatever, whether such retainer shall be annual, or for a longer or shorter period: and to all profits and earnings of whatever value, subject only to such exemptions as are hereinafter granted.

CASE II. RULE 2.—Computation.—Duty shall be computed at a sum not less than the full amount of the balance of the profits, gains and emoluments of such professions, employments or vocations (after making the deductions allowed by this Act, and no other). (*Income Tax Act, 1842, s. 100.*)

Duty shall be computed upon a fair and just average of three years. (*Income Tax Act, 1853, s. 48.*) In the case of a business set up within such period the provision stated under Case I (see page 256) shall apply. (*Income Tax Act, 1842, s. 100.*)

CASES I AND II.

RULE I. — INADMISSIBLE DEDUCTIONS.—No deduction shall be allowed for any disbursements or expenses whatever, not being money wholly or exclusively laid out or expended for the purposes of such trade, etc., or profession, etc. (see below for cases on this point);

SCHEDULE D (CASES I AND II, RULE 1)—*contd.*

nor for any disbursements or expenses of maintenance of the parties, their families or establishments ;

nor for the rent or value of any dwelling-house or domestic offices, or any part thereof, except such part thereof as may be used for the purposes of such trade or concern, not exceeding the proportion of the said rent or value hereinafter mentioned (see Section 101, page 269).

nor for any sum expended in any other domestic or private purposes, distinct from the purposes of such trade, etc., or profession, etc. (*Income Tax Act, 1842, s. 100.*)

Inadmissible deductions.—See also *Case I, Rules 3 and 4*, page 257.

Annual value of premises.—In estimating the amount of profits arising from any profession, trade, employment or vocation chargeable under Schedule D, the sum deducted on account of the annual value of the premises used shall not exceed the amount of the assessment of the premises under Schedule A, as reduced by the allowance under Finance Act, 1894, s. 35 (see *Schedule A, Repairs*, page 189). (*Finance Act, 1898, s. 9.*)

Gillatt & Watts v. Colquhoun (High Court of Justice, 1884).

It was held that the allowance, from profits assessed under Schedule D, in respect of premises used for trade purposes, must be restricted to the annual value according to the assessment under Schedule A, irrespective of the amount of the premium which may have been paid for the lease of the premises. *Grove, J.*—"The whole principle of the Income Tax Acts is to deduct not capital *originally* expended, but (as is shown in *Coltress Iron Co. v. Black*—see page 258) it is to be an annual matter ; and, as far as Schedule A goes, the judgment of Lord Blackburn says expressly that you can only look to the profits of the particular year. Then here what are we only to look at in the particular year ? We are to look at what would be the annual rent. Then the argument (for the firm) is this, that whatever outlay a man makes as a speculation in his business, he can deduct that outlay. I do not suppose that he (counsel) would say that whatever fraudulent outlay

SCHEDULE D (CASES I AND II, RULE 1)—contd.

a man makes should be deducted. I may mention advertisements as one class of outlay, and in one case it was said to be a matter which ought to be deducted. No doubt it would be a most difficult question to settle, because it may differ in different trades. Some trades possibly may be founded very much upon advertisements, and there may be a trade of advertising which is founded upon the value of such advertisements. It is a question of degree, and I do not at present go the length of saying that in no case can advertisements ever be deducted. . . . Now what are we to take as the proper estimate which a prudent man would take as the annual value of these premises. When £1,000 (the Schedule A assessment) is called the 'annual value' we must take it as the real annual value." *Smith, J.*—"In the case of the *Coltness Iron Co. v. Black* the Law Lords undoubtedly lay down that which seems to me to be applicable to Schedule D as well as to Schedule A, namely that diminishing capital or exhausted capital cannot be brought into your profits and gains when making out your accounts either under Schedule D or Schedule A."

Russell v. Aberdeen Town and County Bank (House of Lords, 1888).

The annual value of the whole building may be allowed as a deduction from the profits of a bank which owns the premises, and uses a part for its business, the rest being occupied for residential purposes by the Bank's Managers and Agents. *Lord Herschell.*—"The portion of the bank in which the manager resides is as much used for the purposes of the bank as if it were used in any other way. He resides there for the purposes of the bank; the bank receive nothing for his residing there." *Lord Macnaghten.*—"I think that the deduction was properly and necessarily made in estimating the profits and gains of the bank which were chargeable with duty, and there is nothing under *Schedule D, Cases I and II, Rule 1*, prohibiting the deduction. I do not think that a house

SCHEDULE D (CASES I AND II, RULE 1)—*contd.*

in which a bank or limited company carries on business is a dwelling-house within the meaning of that rule. It is not, and could not be used by the bank for any purpose distinct from their business. I think the expression 'dwelling-house' in that rule means a house in which the person liable to pay tax dwells in the ordinary sense of the word."

Expense incurred in course of trade.

Watney & Co. v. Musgrave (High Court of Justice, 1880).

No deduction was allowed, from the profits of a brewer, in respect of the gradual exhaustion of a premium paid by him for the lease of licensed premises, obtained for the purpose of re-letting as a tied house. *Kelly, C.B.*—"It is claimed to deduct, not the costs of production of the article, but expenses incurred and money disbursed to promote and increase the sale of the article after it has been produced. I am not aware of any authority for deducting such expenses. . . . I myself by way of illustration put the case of advertisements. No doubt many houses engaged in the manufacture of various articles of trade, after those articles are prepared, or while those articles are preparing, with a view of increasing the quantity of the sale, spend a large sum of money in advertisements. I am not aware that any attempt has been made until the present day in the present case to claim to deduct from the amount received from the sale of the whole quantity of beer sold during the year the costs of advertisements by means of which the quantity of beer sold in the course of the year may be considerably increased, but which has no reference and bears no part at all in the production of the article. The present case is another instance not of advertisements, but of expenses incurred in order to induce a publican to purchase quantities of beer, which is exactly of the same character as those incurred in advertisements. It may be necessary to take those expenses into consideration in ascertaining the net profits of a commercial firm during any given year or time; but it

SCHEDULE D (CASES I AND II, RULE 1)—*contd.*

has never been suggested that such expenses should be taken into consideration in ascertaining the difference between the cost of production and the money realised in the course of the year by the sale of beer. . . . Those expenses are of a totally different character from the mere cost of production.” *Hawkins, J.*—“I have failed to find in the Act any ground whatever for saying that a public-house which is bought for the purpose of inducing persons to deal with the occupier of it is to be considered as a trade deduction so as to diminish the amount of profit of trade which would otherwise be assessable. The house itself, it seems to me, is a matter totally apart from the trade. The trade consists to the brewer in manufacturing the beer, in selling it to the customer, and when it has got into the customer’s hands at a fixed price, the price that is paid for the beer *minus* all those charges which are strictly incidental to the production of it (which are clearly those matters which are to be deducted), there remains the profit which is liable to be assessed. . . . They are two distinct things, the trade and the house—they are generally distinct, and I think on that ground the expense incurred in respect of the house cannot be deducted. (Illustration.) If there is a lease and the rent does not equal that which the brewer had to pay for it, surely he cannot deduct the difference as an expense of trade.”

Reid’s Brewery Co., Ltd. v. Male (High Court of Justice, 1891).

A deduction was allowed, from the profits of a brewery company, in respect of the loss of sums lent to its customers on the security of public-houses which proved insufficient to cover the loan. *Charles, J.*—After reading the agreed statement of facts.—“I think that the proper inference of fact to draw from the Agreed statement of facts in this case is this, that the Appellants carry on one business and not two. . . . I think the legitimate conclusion from these statements is that the appellants carry

SCHEDULE D (CASES I AND II, RULE 1)—*contd.*

on the brewing business with this business of money-lending as a branch or adjunct to it." *Pollock, J.*—"I do not think anybody can suppose that this company carry on business as money-lenders only; they carry it on as an adjunct, ancillary to their business as brewers. It would be a fallacy (upon the facts) to call this money capital invested."

Compare this case with *English Crown Spelter Co. v. Baker*, page 261.

Brickwood & Co. v. Reynolds (Court of Appeal, 1898).

No deduction may be allowed, from the profits of a brewer, in respect of his expenditure on the repairs of a tied house in excess of the allowance of one-sixth of the annual value made under Schedule A. *Smith, L. J.*—"They have been buying tied houses for the purpose of extending their trade. . . . It is impossible to allege that the whole of this money for repairs of the public-house was laid out exclusively for the trade of brewer." *Rigby, L. J.*—"It is impossible to say that a house, which is *de facto* occupied for the purposes of the publican for carrying on his trade, can be said to be in any sense at the same time occupied for the purposes of the trade of the brewery."

Southwell v. Savill Bros., Ltd. (High Court of Justice, 1901).

A brewery company made certain payments to the owners of public-houses for the right to call for the surrender of their licences if its own applications for new licences were successful. They claimed a deduction from their profits in respect of payments made in cases where their applications were refused. It was held that such deductions were inadmissible. *Kennedy, J.*—"This is not an expenditure which ought to be treated as a loss—it is a sum which may be treated as an investment which goes to capital." *Phillimore, J.*—"If they (the claims) are not to be supported so far as they are in respect of successful applications, why are they to be supported

SCHEDULE D (CASES I AND II, RULE 1)—*contd.*

when they are in respect of unsuccessful applications ? The profits for the year would be exactly the same whether this money was expended towards the close of the year or not."

Smith v. Lion Brewery Co., Ltd. (House of Lords, 1910).

It was held that, in assessing a brewer in respect of his profits, a deduction should be made of the proportion of the compensation fund charge borne by him in respect of tied houses let by him to tenants. In the House of Lords opinions were equally divided and the judgment of the Court of Appeal in the company's favour was therefore sustained.

The unsuccessful case *against the company* is shown by the following extracts from the Lord Chancellor's judgment, but it will be remembered that his opinions *were not upheld and have not the force of law*. Lord Chancellor.—"The Lion Brewery Company's trade is that of manufacturing and selling beer wholesale. It must be taken that (their) motive in owning tied houses was simply and solely to obtain a reliable market for their beer, and this is the utmost which can be conveyed in the special case (stated by the Commissioners). The company owned the tied houses for that reason and it was essential to their trade to own them. The Act of 1904 compels a licence holder to pay a levy. That levy is to form a fund out of which compensation is to be made to those whose licences are discontinued through no fault of their own. . . . When a public-house is deprived of its licence under the Act of 1904 a trade is destroyed. It is the retail trade which is destroyed, comprising the sales of wines and spirits as well as the sale of beer. Suppose that the owner of the house is not a brewer, but a man who has no trade at all. It was not argued that he can make a deduction under Schedule A, and as to Schedule D he can make no deduction because he carries on no trade, and is not therefore accountable at all under that Schedule. But it is said that the owner of the house, if he is also a brewer, can make the deduction from the profits of his brewery trade under

SCHEDULE D (CASES I AND II, RULE 1)—contd.

Schedule D. In my opinion he cannot, and for two reasons.

In the first place, the trade from the profits of which he seeks to make the deduction is the wholesale trade of manufacturing and selling beer alone. The levy, so far as it is laid out or expended for the purpose of any trade, is laid out or expended for the purpose of insuring against loss by destruction of the retail trade authorised by the licence, which is that of selling wine and spirits and not beer alone. I confess that I cannot see how the levy can be said to be 'wholly and exclusively laid out or expended for the purpose of the trade' of the Lion Brewery Company, which has nothing to do with wine and spirits. . . . *In the second place*, it is only in the character of owners of a house that the company can be called upon to pay this levy at all. The share of the levy which they have to pay is proportioned to the interest they have in the house, and has no relation to their wholesale trade of manufacturing and selling beer. They pay income tax for the house under Schedule A, not under Schedule D, and I cannot perceive how they can claim a deduction in the terms of Schedule D in respect of a property which is assessed under a wholly different Schedule. You cannot, by saying that a man carries on the business of owning house property, shift the method of assessing that property for income tax from Schedule A to Schedule D."

The grounds for the decision *in favour of the company* are shown in the following extracts from the judgment of *Lord Atkinson*.—"It certainly would appear to me that where a trader deliberately acquires any particular interest in the licensed premises, wholly and exclusively for the purpose of using that interest to secure a market for the commodities he manufactures, the money he must expend to satisfy the charge thus imposed is necessarily disbursed wholly and exclusively for the purposes of this his trade. . . . It is urged that the landlord pays his contribution as landlord and because of his proprietary interest in the premises, and not as trader, since he would be equally liable to it whether he traded or not. That, no doubt,

SCHEDULE D (CASES I AND II, RULE 1)—*contd.*

is so, but in the present case the company have become landlords and thus liable to pay the charge, for the purpose solely and exclusively of setting up the tied-house system of trading. . . . Next it was argued that regard must be had to the purpose to which the contribution was devoted. I think that this is an altogether irrelevant matter (proceeding to cite the cases of licence duties which are allowable as deductions irrespective of their ultimate appropriation by the Legislature). . . . The contribution is a payment by way of insurance premium against the loss of the licence, which means in all cases as regards the publican an insurance against the loss of his trade or business, and as regards the landlord in such a case as the present primarily and mainly an insurance against the loss of a market for the sale of his beer, seeing that the purpose for which the licensed premises have been acquired was to secure a market. . . . Lastly, it was objected that the licence, which draws after it the liability to pay the compensation contribution, authorises trading in several articles in addition to beer. It matters not to the respondents in respect to what trading, in addition to the trading in beer, the liability for the entire contribution is incurred. They deliberately assume the liability for the landlords' share of it solely to get a market for their beer, and therefore the disbursement of it is a disbursement made wholly and exclusively for the purposes of their trade as vendors of beer."

Usher's Wiltshire Brewery, Ltd. v. Bruce (Court of Appeal, 1914).

In estimating their profits as brewers for purposes of assessment under Schedule D, the company were not allowed to deduct any of the following sums expended in connection with their tied houses, viz., the difference between rents received and rents paid, fire and licence insurance premiums, rates and taxes, legal costs in respect of the renewal of licences, tenants' agreements, etc., and the cost of repairs to tied houses.

SCHEDULE D (CASES I AND II, RULE 1)—contd.

Ashton Gas Co. v. Attorney-General (House of Lords, 1905).

The special Act of a gas company provided that its ordinary shareholders should not receive in any year a dividend larger than ten per cent. It was held that the amount of such dividend should be calculated, and that income tax should then be deducted therefrom. It followed that income tax should not be charged as a trade expense. *Lord Chancellor.*—"Now, the profit upon which the income tax is charged is what is left after you have paid all the expenses necessary to earn that profit; indeed profit is a very plain English word, that is what is charged with income tax. But if you confused the expenditure which is necessary to earn that profit with the income tax, which is a part of the profit itself, one can understand how you get into the confusion which has induced the learned counsel to point out at such very considerable length that this is not a charge upon the profits at all. The answer to that is this—the income tax is a charge upon the profits, the thing which is taxed is the profit which is made, and you must ascertain what is the profit that is made before you deduct the tax. *You have no right to deduct the income tax before you ascertain what the profit is.*"

As to Foreign Taxation, see **Schedule D, What constitutes Profit?** page 246.

Rhymney Iron Co., Ltd. v. Fowler (High Court of Justice, 1896).

It was held that a subscription paid by a colliery company to a Coal Owners' Association (the object being to secure an indemnity in the event of certain stoppages of output) may not be deducted from the profits assessable. *Pollock, B.*—"We must not allow any item in favour of the person who is taxed merely because it is an item which would properly find its way into a profit and loss account, between a man and his partners, or as kept for himself. There are a great many things that a prudent trader might treat as deductions because he wished to make a fund to provide against future accidents and things of that kind

SCHEDULE D (CASES I AND II, RULE 1)—*contd.*

which are not dealt with at all by the Income Tax Acts. . . . This is not money laid out for the purpose of such trade. It is money laid out in order to provide for an unfortunate contingency whereby the trade cannot be worked."

Moore v. Stewarts and Lloyds, Ltd. (Court of Session, Scotland, 1906).

The company entered into an agreement by which it obtained a commanding interest in the management of another company, in return for an undertaking to make up the yearly profits of that company to a certain amount. The commissioners considered that payments made by Stewarts and Lloyds, Ltd., under the second clause were allowable as deductions from its profits, being made "for the purposes of its trade and that it might sell its goods at a better price." It was held that the question was mainly one of fact, and that the commissioners decided it correctly. *Lord McLaren*.—"If the agreement was entered into with a view to profit, as I think it was, then the annual charge to the respondent company is in my view a part of their business outlay or expenditure, and is not subject to assessment."

See also *English Crown Spelter Co. v. Baker*, page 262, as to arrangements between two companies.

Guest, Keen, and Nettlefolds, Ltd. v. Fowler (High Court of Justice, 1910).

The company is a member of a manufacturer's association formed for the purpose of keeping up prices, and contributes towards its expenses. Any member invoicing more than a fixed proportion of orders contributes to a Pool Account, which is divided amongst members invoicing less than their proportions. The net payment to the association was allowed as a deduction from profits.

Bray, J.—"The trade includes not only the manufacture but the selling; and indeed the selling is very often the most important part; the whole of the profits depends upon the price. What does the selling consist of? It

SCHEDULE D (CASES I AND II, RULE 1)—*contd.*

consists of two things: the finding of the customer and making a bargain with the customer as to the price, the object being, of course, to get the highest possible price. . . . What I have to see is whether this money which was expended was wholly laid out or expended for that purpose; that is for the purpose of selling their goods at the greatest possible advantage. . . . I have found that it (the association) is mainly formed for the purpose of keeping up prices and so earning larger profits. I have looked through the Rules and I can find no other object whatever. Therefore, it seems to me, I am bound to find that this money was paid for the purpose of keeping up the price and thus earning the larger profits of the trade."

Lochgelly Iron and Coal Co., Ltd. v. Crawford (Court of Session, Scotland, 1913).

The company claimed to set against its receipts certain contributions made to a Coalowners' Association of which it was a member. The Court suggested that the contributions were allowable as deductions or otherwise according to the purposes for which they were expended by the Association. After examination of this matter it was held (1) that the proportion of the contributions expended in defraying the expenses of the Conciliation Board should be deducted, but not the proportion expended (2) by way of subscription to the Mining Association of Great Britain or (3) in experimenting with coal dust. It was agreed between the parties that (4) the proportion applied to the working expenses of the Association and maintenance of a reserve station should be deducted, but not (5) capital expenditure on the reserve station and the cost of a presentation to the Chairman.

Lord President.—" (1) The Conciliation Board is a machinery by which disputes between the workmen and the employer may be settled, and by that means expenses kept down and more profits earned. (2) The Mining Association is an association of a particular definite character, to keep a watchful eye on the proceedings, no doubt

SCHEDULE D (CASES I AND II, RULE 1)—*contd.*

in the interest of mining interests generally, but without that character of particular service which I think is prominent in a Conciliation Board. (3) It is explained that the experiments were made on the explosive properties of coal dust at the instigation of the Home Secretary. It was a voluntary and very proper act of the company, but not an expense they undertook for the purpose of earning more profit that or any other year."

Strong and Co. v. Woodifield (House of Lords, 1906).

A brewery company carrying on the business of inn-keepers was not allowed to deduct from its profits a sum paid in compensation to a visitor for injuries caused by the falling of a chimney. *Lord Chancellor*.—"It does not follow that if a loss is in any sense connected with the trade it must always be allowed as a deduction. . . . I think only such losses can be deducted as are connected with it in the sense that they are really incidental to the trade itself. They cannot be deducted if they are mainly incidental to some other vocation, or fall on the trader in some character other than that of trader. Losses sustained by a railway company in compensating passengers for accidents in travelling might be deducted. On the other hand, if a man keeps a grocer's shop, for keeping which a house is necessary, and one of the window shutters fell upon and injured a man walking in the street, the loss arising thereby to the grocer ought not to be deducted. . . . In the present case, I think the loss sustained by the Appellants was not really incidental to their trade as inn-keepers, but fell upon them in their character not of traders but of householders."

Brown v. Watt (Court of Exchequer, Scotland, 1886).

A seed merchant sustained losses on a farm (assessed under Schedule B) worked by him in connection with his seed business. It was held that no deduction may be made from the Schedule D assessment on the business in respect of losses so sustained. *Lord President*.—"They (the two businesses) may be combined in the ordinary

SCHEDULE D (CASES I AND II, RULE 1)—*contd.*

case of a merchant and manufacturer as one business, but they may also remain, as in the present case, necessarily unconnected with each other in the sense of the Income Tax Acts. The one assessment is under Schedule B, the other under Schedule D. I do not think that in any proper sense, and especially not in the statutory sense, can this undertaking in connection with the farm be held to be connected with or arising out of the trade of a seed merchant."

Grimes v. Lethem (1898).

It was held that the procedure under the Customs and Inland Revenue Act, 1890, s. 23 (4) should have been followed by a traveller who wished to deduct from an assessment on him as such (under Schedule D) losses sustained by him in the production of a railway signal. It was not decided whether the loss was such as to fall within the scope of Section 23 (page 30).

Walker v. Reith (Court of Session, Scotland, 1906).

A manufacturer left his business in the hands of trustees, requiring that the profits should be divided amongst certain employees, only ten per cent. of such profit, however, being distributed in cash and the balance being credited to the employees, but retained by the trustees to form a fund for paying out the whole of the testator's capital. It was held that the employees were not partners in the business, but remained employees until the capital referred to was paid out; also that for purposes of a claim to abatement, an employee need only regard as income the share of the profits actually received by him.

Vallambrosa Rubber Co., Ltd. v. Farmer (Court of Sessions, Scotland, 1910).

A deduction was allowed from the company's profits in respect of expenditure of a recurring nature (weeding, etc.), on the whole estate, including portions not yet yielding rubber. *Lord President*.—(With regard to the suggestion that "nothing ever could be deducted as an

SCHEDULE D (CASES I AND II, RULE 1)—*contd.*

expense unless that expense was purely and solely referable to a profit which was reaped within the year"—). "I think that proposition has only to be stated to be defeated by its own absurdity. . . . When you come to think of the expense in this particular case that is incurred, for instance, in the weeding which is necessary in order that a particular tree should bear rubber, how can it possibly be said that that is not a necessary expense for the rearing of the tree from which alone the profit eventually comes? And the Crown will not be prejudiced by this, because when the tree comes to bear the whole produce will go to the credit side of the profit and loss account. When the year comes when the tree produces, the only deduction will be the amount which has been spent on the tree in that year; they will not be allowed to deduct what they deducted before. . . . Now, I don't say that this consideration is absolutely final or determinative, but in a rough way I think it is not a bad criterion of what is capital expenditure as against what is income expenditure to say that capital expenditure is a thing that is going to be spent once and for all, and income expenditure is a thing that is going to recur every year. Therefore, *primâ facie*, weeding, which does occur every year, seems to be an income expenditure." *Lord Johnston*.—"As at present worked the trade of the company is the cultivation and production for sale at profit of rubber and other tropical products. For this purpose land had to be acquired, cleared and drained, roads made and buildings erected, before the cultivation began. What was expended for these purposes was, I think, capital expenditure, and not, in the sense of the Income Tax Act, money laid out and expended for the purposes of the trade. But once the cultivation began with the planting, expenditure on cultivation production and marketing was, I think, revenue expenditure for the purposes of the trade."

The following items of expense were allowed to be charged against Revenue: The cost of superintendence, stores, nurseries, seeds,

SCHEDULE D (CASES I AND II, RULE 1)—*contd.*

lining and cutting pegs, weeding, watching, cutting out rubber and tapping, also medical and home management expenses.

Wylie v. Eccott (Court of Session, Scotland, 1912).

It was held that a person assessed in respect of the profits of letting a furnished house may not deduct therefrom the rent paid by such person for another furnished house in which she resided while her own was let. *Lord President.*—"The Crown make a claim under Schedule D, and they first of all begin with the rent which she got from her tenant. Then they naturally take off from that the proportion of the rent in the Valuation Roll upon which she has already paid income tax under Schedule A, corresponding to the period for which it is let. Then they take off certain other deductions in respect of rates, wear and tear of furniture, cleaning, and agency, and they bring out the sum which represents clear profit to the lady and on which they propose to charge. She says—and it is contended in this case—that she is further entitled to make a deduction of the rent which she had to pay for a house elsewhere when she turned out of her own house in order to allow it to be let. Now if it was the law that you were entitled before reckoning the profits of your business to have a deduction for the necessary cost of your living somewhere, because you must always live somewhere in order to conduct business, the argument would be a good one, but as it is distinctly specified in one of the cases under the Income Tax Acts and acted on, that no such charge is permissible, I am afraid that this charge cannot come in."

Darngavil Coal Co, Ltd. v. Francis (Court of Session, Scotland, 1913).

A coal company entered into an agreement with a waggon company under which, in return for ten annual payments, the waggon company undertook to supply the coal company with a certain number of waggons, and to keep such waggons in good repair and at their own risk until the end of the ten years, when the coal company

SCHEDULE D (CASES I AND II, RULES 1, 2, AND 3)—

should have the option to purchase the waggons at the nominal price of one shilling for each waggon. It was held that the annual payments include a consideration for the use of the waggons and a further consideration for the option to purchase. The former consideration, but not the latter, should be charged in the coal company's accounts as a trade expense. *Lord President*.—"It is clear that, so far as the coal company have the use of the waggon by the hiring of it during that time, that is an expense which they are entitled to deduct, just as if they owned no waggons at all, but simply hired them from day to day. It is equally clear that they could not claim to deduct the whole of what they paid to the waggon company, because a large proportion of what they pay is really a payment for an option at a future date to get a waggon at a sum far under its real value."

CASES I AND II. RULE 2.—Profits of lands to be excluded.—The computation of duty in respect of any trade, manufacture, adventure or concern, or any profession, whether carried on by any person singly or by one or more persons jointly, or by any corporation, company, fraternity or society, shall be made exclusive of the profits and gains arising from lands, tenements or hereditaments occupied for the purpose of such profession, trade, manufacture, adventure or concern.

See *General Hydraulic Power Co., Ltd. v. Hancock*, page 270.

CASES I AND II. RULE 3.—Partnerships.—The computation of duty in respect of any trade, manufacture, adventure or concern, or any profession, carried on by two or more persons jointly, shall be made and stated jointly and in one sum, separate and distinct from any other duty chargeable on the same persons.

The return of the partner first named in the deed of partnership (or where none, that of the partner named singly or with precedence in the usual name of such firm—or, where such partner is not acting, that of the precedent acting partner resident in the United Kingdom), who is hereby required to make a return on his own behalf, and on

SCHEDULE D (CASES I AND II, RULES 3 AND 4)—

that of the other partners, whose names and addresses shall be declared in the return, shall be sufficient authority to charge such partners jointly. Where no such partner is resident in the United Kingdom, the return shall be made by the agent, manager, or factor resident in the United Kingdom, and the assessment made on the partnership.

Any partner returned by the precedent partner may return his name and place of abode without returning the amount of duty payable by him, unless the commissioners require a further return. The commissioners may require particulars from all partners as from the precedent partner.

Farrell v. Sunderland Steamship Co., Ltd. (High Court of Justice, 1903).

A company which owns one ship, acquires fifty-nine sixty-fourths of a second ship, whose accounts and management it takes over. It was held that the second ship is a separate concern carried on by a partnership, and that the company must not be assessed for both concerns in one sum on its average profits. *Ridley, J.*, referred to *Attorney-General v. Borrodaile* (1814), where it was decided, in precisely similar words, under precisely similar arrangements, that the ship's husband, or managing owner (which would be the company here) is bound to make a joint return of the correct profits of the concern.

CASES I AND II. RULE 4.—Succession and Specific Cause of Loss.—If amongst any persons engaged (in any trade, manufacture, adventure or concern, or in any profession) in partnership together, any change shall take place in any such partnership, either by death, or dissolution of partnership as to all or any of the partners, or by admitting any other partner therein, before the time of making the assessment or within the period for which the assessment ought to be made, or if any person shall have succeeded to any trade, etc., within such periods, the duty payable in respect of such partnership, or of any such partner, or any person succeeding to such profession, etc., shall be computed according to the profits and gains of such business derived during the respective

SCHEDULE D (CASES I AND II, RULE 4)—*contd.*

periods herein mentioned notwithstanding such change therein or succession thereto unless such partners or such person succeeding shall prove, to the commissioners' satisfaction that the profits of such business have fallen short, or will fall short, from some specific cause to be alleged to them, since such change or succession took place, or by reason thereof. (Also see page 31.)

Adjustment of assessment between old and new proprietors.— See page 306.

Alexander Ferguson & Co., Ltd. v. Aikin (Court of Exchequer, Scotland, 1898).

The general commissioners decided that, in the case of a certain distillery taken over by a company and worked by it in connection with other businesses elsewhere, there was no succession within the meaning of the section. The Court held that the matter was one of fact to be decided absolutely by the general commissioners. *Lord President.* —“The commissioners held that there was not a sufficient identity between the business carried on by the old partnership and the new business carried on by the new Company. This is a question of fact, and all I can say on the question of fact that what is set forth in the Memorandum of Association does not present a case from which the legal conclusion is necessarily opposite to that arrived at by the Commissioners.”

Ryhope Coal Co. v. Foyer (High Court of Justice, 1881).

(1) Where a private concern was converted into a limited liability company it was held that the same business had been succeeded to within the meaning of the section. (2) It is possible for extraordinary depression of trade to be a “specific cause” of loss. *Lindley, J.*—(1) “It is a new association carrying on an old trade. . . . The Commissioners have found as a fact that from the ‘extraordinary depression in the iron and coal trades’ the profits have fallen off since the succession to the places, and the only question which remains is whether there is a ‘specific cause.’” *Grove, J.*—(2) “Depression of trade

SCHEDULE D (CASES I AND II, RULE 4)—*contd.*

may be, but is not necessarily, a specific cause. It must be something unusual, exceptional, extraordinary."

Watson Brothers v. Lothian (Court of Exchequer, Scotland, 1902).

A "tramp" steamship was sold without the transfer of books or customers. It was held that the assessment on the new owners should be irrespective of previous profits. *Lord President*.—"There is no succession to any trade, etc. There is simply the purchase of a corporeal moveable which may or may not carry on the same business." *Lord McLaren*.—"This cargo-carrying trade was not transferred from the former owners to the present owners, but what was transferred was the corpus of the ship itself."

Bell v. National Provincial Bank of England, Ltd. (Court of Appeal, 1904).

A bank with 199 branches took over the business, premises, and staff of a single-branch bank. It was held that the business of the single-branch bank was "succeeded to" by the larger bank. *Master of the Rolls*.—"In the case of a new company, formed for the first time and acquiring the Stafford Bank, that would clearly be a case of a person succeeding. What difference does it make that the person who succeeds to the concern should himself already have an existing business. . . . The great point urged (for the Company) was that the question whether there was a succession or not must be a question of fact, and the commissioners must be taken in this case to have found as a fact that there was no succession; and he (the Company's counsel) relies upon the authority of a case decided in Scotland of *Ferguson v. Aikin* as showing that it is and must be a question of fact whether there has in point of fact been a succession or not. It may be in many cases, or in some cases at all events, a question of fact. But it seems to me that if it was a question of fact for the Commissioners in this case they have deliberately not decided it. They presented to us a problem of law,

SCHEDULE D (CASES I AND II, RULE 4)—*contd.*

and they have given us the benefit of their opinion upon it, and if we do not agree with it we are entitled to say so. In my view if this is a finding, as I think it must be, of law that there is no succession within the meaning of the Rule, I find myself unable to agree with it for the reason I have given. The fact that in a particular case, which was a rather exceptional case, in Scotland the Court held that, the Commissioners having found that there was no succession in point of fact, they are bound by that decision, in my opinion presents no difficulty in this case."

Stockham v. Wallasey Urban District Council (High Court of Justice, 1906).

A local authority acquired a tramway from a company which had carried it on in conjunction with an omnibus undertaking. It was held that the local authority had succeeded to the tramway undertaking of such company and should be assessed on the average profits of the past three years.

Merchiston Steamship Co., Ltd. v. Turner (High Court of Justice, 1910).

The company owned and traded with one ship, which was lost in April, 1906. Under its Memorandum of Association the company may own one ship only at any time. In May, 1906, it ordered a new ship, which commenced trading in October, 1906. It was held that, from 1904 to 1906 inclusive, one business was carried on, and that the assessment for 1907 should be based on the average profits of those years, and not on the profits of the first year of trading with the new ship. *Bray, J.*—"I do not think a new business was started. I think it was from beginning to end one business, that is to carry on the business of steamship owners with this limitation, that there should never be more than one steamship owned by them at the same time."

Succession — Cessation — Specific Cause. — See also under **Assessments—Adjustment at end of year**, page 31.

SCHEDULE D (CASES I AND II, RULE 5 ; CASE III)—*contd.*

CASES I AND II. RULE 5.—Place of Assessment.—Every statement of profits to be charged under this Schedule shall include every source so chargeable on the person delivering the same, on his own account, or on account of any other person, and every person shall be chargeable in respect of the whole of such duties in one and the same division and by the same commissioners ;

except where the same person shall be engaged in different partnerships or concerns relating to trade, or manufacture, in divers places, in each of which cases a separate assessment shall be made on each concern where, if singly carried on, such concern ought to be charged.

Every statement on behalf of any other person for which such person shall be chargeable, or on behalf of any corporation, fellowship, fraternity, company or society, shall include every source chargeable as aforesaid, and shall be delivered in that division where such person, corporation, etc., would be chargeable if acting on his own behalf.

See also s. 106 (page 306) as to place of assessment.

CASE III.

The duty to be charged in respect of profits of an uncertain annual value, not charged in Schedule A.

CASE III. RULE 1.—Computation.—The duty to be charged in respect thereof shall be computed at a sum not less than the full amount of the profits and gains arising therefrom within the preceding year (ending as in Case I, page 256)—to be paid on the actual amount without any deduction.

CASE III. RULE 2.—Interest not Annual.—The profits on all securities bearing interest payable out of the public revenue (except those charged under Schedule C) and on all discounts, and on all interest of money not being annual interest shall be charged according to Rule I of this case.

See under **Interest** for general rules of charge.

CASE III. RULE 3.—Cattle and Milk.—Where the commissioners, on examination, find that any lands charged on the rent or annual value, occupied by a dealer in cattle, or by a dealer in or seller of milk, are not sufficient for the keep of the cattle brought thereon, so that the rent or annual value cannot form a just estimate of the

SCHEDULE D (CASE III; CASE IV; CASE V)—

dealer's profits, they may require a return of such profits, and charge such further sum as, together with the Schedule B assessment, shall make up the full sum wherewith such trader ought to be charged on the like amount of profits according to Rule I of this Case. (*Income Tax Act, 1842, s. 100.*)

CASE IV.

Duty to be charged in respect of interest arising from securities in any of Her Majesty's dominions out of the United Kingdom, and foreign securities, except such annuities, dividends, and shares as are directed to be charged under Schedule C.

Computation up to 1913-14 inclusive.—The duty shall be charged on a sum not less than the full amount of the sums (so far as the same can be computed) which have been or will be received in the United Kingdom in the current year, without any deduction or abatement.

Computation for 1914-15.—See the next page.

For decisions, see page 294.

CASE V.

The duty to be charged in respect of possessions in any of Her Majesty's dominions out of the United Kingdom, and foreign possessions.

Computation up to 1913-14 inclusive.—The duty shall be charged on the full amount of the actual sums annually received in the United Kingdom, either for remittances from thence payable in the United Kingdom, or from property imported from thence into the United Kingdom, or from money or value received in the United Kingdom, and arising from property which shall not have been imported into the United Kingdom, or from money or value received on credit or on account in respect of such remittances, property, money, or value brought or to be brought into the United Kingdom.

The duty shall be computed on an average of the three preceding years, as directed in Case I, without other deduction than is allowed in that case.

Computation for 1914-15.—See the next page.

SCHEDULE D (CASES IV AND V)—**CASES IV AND V.****Computation for 1914-15.**

Income tax in respect of income arising from *securities, stocks, shares, or rents* in any place out of the United Kingdom shall, notwithstanding anything in the rules under the fourth and fifth case in Section 100 of the Income Tax Act, 1842, be computed on *the full amount of the income, whether the income has been or will be received in the United Kingdom or not.*

Subject in the case of income not received in the United Kingdom to the same deductions and allowances as if it had been so received and to a deduction on account of any local tax and of any annual interest or any annuity or other annual payment payable out of the income to a person not resident in the United Kingdom; and the provisions of the Income Tax Acts (including those relating to returns) shall apply accordingly.

Provided that this section shall not apply in the case of a person who satisfies the Commissioners of Inland Revenue (subject to right of appeal to the High Court) that he is not domiciled in the United Kingdom, or that being a British subject he is not ordinarily resident in the United Kingdom. The rules of Cases IV and V shall not be construed so as to render liable income on which tax has been paid under this section, or income from securities, stocks, shares, or rents which was paid or became due before 6th April, 1914. (*Finance Act, 1914, s. 5.*)

General.

Duties on all interest, dividends, or other annual payments payable out of or in respect of the stocks, funds, or shares of any foreign company, society, adventure or concern (or in respect of any securities given by or on account of any foreign company, society, adventure or concern) entrusted to any person in the United Kingdom for payment to any person, etc., in the United Kingdom, shall fall within the provisions and penalty of Income Tax (Foreign Dividends) Act, 1842, s. 2. (See **Schedule C**, page 205.)

The person so entrusted, or acting as agent, shall perform all necessary acts. Assessments shall be made by the special commissioners under Schedule D. (*Income Tax Act, 1853, s. 10.*)

SCHEDULE D (CASES IV AND V)—contd.

The provisions of Income Tax Act, 1853, s. 10, shall extend to interests payable out of the stocks of any *Colonial* company, etc. (*Revenue (No. 2) Act*, 1861, s. 36.)

The provisions of Income Tax Act, 1853, s. 10, and Revenue (No. 2) Act, 1861, s. 36, shall extend to dividends, etc., where the right or title of the person to whom they are payable is shown by the registration of his name in any book or list ordinarily kept in the United Kingdom. (*Revenue Act*, 1866, s. 9.)

The provisions of Income Tax Act, 1853, s. 10, shall extend to *Indian* funds. (*Revenue Act*, 1868, s. 5.)

“Persons entrusted”—as to other persons included see under Schedule C, page 202. (*Customs and Inland Revenue Act*, 1885, s. 26.)

Income Tax shall not be payable in respect of the interest or dividends of any securities of a foreign state or a British possession which are payable in the United Kingdom, where it is proved to the Board that the person owning the securities and entitled to the interest or dividends is not resident in the United Kingdom; but, save as provided by this or any other Act, no allowance shall be given or repayment made in respect of such interest or dividends.

Board may give relief by allowance or repayment on a claim being made to them within six months of the end of the year of charge. (*Finance (1909-10) Act*, s. 71 (2).) Now three years. (*Finance Act*, 1914, s. 11.)

When foreign or colonial securities are held under any trust, and the person who is the beneficiary in possession under the trust is the sole beneficiary in possession and can, by means either of the revocation of the trust or of the exercise of any powers under the trust, call upon the trustees at any time to transfer the securities to him absolutely free from any trust, that person shall be deemed to be the person owning the securities for the purpose of the Finance (1909-10) Act, 1910, s. 71 (2). (*Revenue Act*, 1911, s. 13.)

Interest Remitted.

Note, however, the effect of Finance Act, 1914, s. 5, page 293.

Scottish Mortgage Company of New Mexico v. McKelvie
(*Court of Exchequer, Scotland*, 1886).

It was held that an assessment under Case IV was not incorrect, in respect of a company formed to borrow money

SCHEDULE D (CASES IV AND V)—contd.

in England and to invest it abroad at higher rates of interest. *Point at issue.*—Is Case IV applicable or Case I? *Lord President.*—"The duty might be charged under the First Case. The question is whether it may be lawfully charged under the Fourth case. The income may fall under more than one description in the statute, and in that case it would, of course, be in the option of the commissioners of inland revenue to take the case most favourable to themselves."

On the question whether any interest was received here within the meaning of Case IV. (The money in question was not actually remitted to this country, but was treated in the Company's books as having been so remitted, inasmuch as it was necessary to pay a dividend here, and this could not legally be done out of the capital sums which in fact constituted the Company's only available resources in the United Kingdom.) *Lord Mure.*—"The moneys were so disposed of as to show that the interest was in substance brought into account in this country, and so received and dealt with as interest. The bringing it into account in that way makes it money substantially received by them here in the sense of Case IV." Approved by *Lord Macnaghten* in *Gresham Life Society v. Bishop* (House of Lords—see page 298).—"In that case the company acted as their own bankers and did for themselves what might have been done by an ordinary bank on their behalf." Disapproved by *Lord Brampton*, who held, however, that it is distinguishable from *Gresham Life Society v. Bishop*.

See also *Lord President* in *Forbes v. Scottish Widows Fund and Life Insurance Society.*—"In *Scottish Mortgage Co. of New Mexico v. McKelvie* the money could only be said not to have been received, if money sent home by bill is not received in this country, or if no colonial interests are received in the United Kingdom which do not reach it in specific form."

Also *Wright, J.*, in *Norwich Union Fire Insurance Co. v. Magee* (High Court of Justice).—"The Scotch case

SCHEDULE D (CASES IV AND V)—*contd.*

of *McKelvie* is no doubt an authority for the proposition that if a particular company is clearly within Case IV, the Crown may tax it under Case IV, even though it may also be under Case I. But I doubt whether the Crown could always elect to tax under Case I if the Company were clearly under Case IV. I do not say whether it is so or not. I only say it seems to me doubtful." (See page 86.)

Smiles v. Northern Investment Company of New Zealand Court of Exchequer, Scotland, (1887).

The general commissioners did not consider the *Scottish Mortgage Company of New Mexico v. McKelvie* to be decisive, and therefore sustained the appeal of the *Northern Investment Company of New Zealand* on a similar question. The *Scottish Mortgage Case* was followed. With regard to the functions of the general commissioners and of the surveyor, as representing the commissioners of inland revenue, referred to in his judgment (quoted in the *Scottish Mortgage case*):—*Lord President*.—"The (local general) commissioners from whom this appeal is taken are vested with a quasi-judicial function in determining whether the assessment, *as finally adjusted by the Surveyor* and laid before them, is well laid or not, *if it is objected to by the party assessed*; and accordingly, the statute provided that whatever the determination of these commissioners may be, an appeal lies to this Court. They can have no discretion in the matter at all. They are to determine the dispute between the two parties before them, and that is their only function, so far as I can see, in regard to a case of this description."

Forbes v. Scottish Provident Institution (Court of Exchequer, Scotland, 1895).

Forbes v. Scottish Widows Fund and Life Assurance Society (Court of Exchequer, Scotland, 1895).

The society lends money in Australia, and the interest is retained abroad for reinvestment, or for the expenses of

SCHEDULE D (CASES IV AND V)—*contd.*

branch offices there. It was held that the interest was not assessable under Case IV, although it appeared in the accounts of the company at home. *Lord President.*—“The phrase ‘constructive remittance’ is one which, if used at all, requires to be carefully guarded. . . . Every man and every company having foreign or colonial investments knows of the interest arising from them, takes note of it, and enters it in any statement of affairs which may require to be made up. But this will never make interest ‘received in the United Kingdom.’”

Universal Life Assurance Society v. Bishop (High Court of Justice, 1899).

An English company receives certain interest in India, which it leaves there to meet its Indian liabilities (such as obligations under policies). It was held that the interest was constructively remitted to England. *Grantham, J.*—“I find that the interests received in India are kept in their accounts in such a way as to justify the Crown in saying that the society has treated the dividends just as if they had been received in England.” *Kennedy, J.*—“I think that the facts stated in the case show that this Indian interest was not merely entered in the accounts of the Society, which by itself would be a matter of little consequence, but was retained in India really as a matter of commercial convenience, and that but for such retention an equal sum must have been remitted to India to discharge the Society’s liability there, and that in reality the amount of this Indian interest was treated by the Society as part of the divisible property upon which dividends according to law have been declared and paid in the United Kingdom. . . . *Forbes v. Scottish Widows Fund and Life Assurance Society* and *Forbes v. Scottish Provident Institution* appear to be distinguishable upon the facts. In neither case was the interest received abroad treated in any division of profits as forming part of the profits. It was simply retained abroad for purposes of loan and investment.

SCHEDULE D (CASES IV AND V)—contd.

Standard Life Assurance Co. v. Allan (Court of Exchequer, Scotland, 1901).

A company was entitled to certain interest abroad, only part of which was remitted to the United Kingdom according to the general policy of the company. It was held that the interest received and reinvested abroad was not assessable under Case IV, as being received in the United Kingdom. *Clerk, L.J.*—"Does information to the investment holder that he has made a profit on his foreign investments *ipso facto* constitute a receiving of it here? I am of opinion that it was rightly held in the case of *Forbes v. Scottish Provident Institution* that it did not."

Gresham Life Assurance Society v. Bishop (House of Lords, 1902).

A society has investments in foreign countries. The interest received in each country is either used for the upkeep of the branches there, or invested in that or another foreign country. It was held that the interest is not constructively remitted to the United Kingdom although it is included in the books here as profit. *Lord Chancellor.*—"The question in this case seems to me to depend upon the actual words used by the Legislature, and I deprecate a construction which passes by the actual words and seeks to limit the words by what is supposed to be something equivalent to the language used by the Legislature. . . . This impost is only to be levied provided the money is received in this country. . . . The difficulty of identifying the actual sum is no limit on the enactment. The Legislature must be supposed to have contemplated the possibility of drawing a distinction between money received in this country and money accounted for or credited in account. If it were not for the difficulty of ear-marking money I should think no one would have any doubt that the money must be received in this country to bring it within the words of the statute. If it were not money

SCHEDULE D (CASES IV AND V)—*contd.*

but some commodity, say tobacco, which a trader carrying on business in London and Paris was accounting for to his London house, no one would say that, though the Paris tobacco was credited in account as a set-off against some expense or something that the supposed London firm had to set off against the same claim, and that as the London firm was paid by the Paris tobacco, therefore the tobacco was liable to the import duty on tobacco because it was taken into account in the books of the London firm. In no way that I can give any reasonable interpretation to has the *money* reached this country or been received in this country. It, like the tobacco in the case suggested, has not been imported, and if the Legislature had intended that bringing into account was to be equivalent to its being received, it would have been easy to say so. . . . I do not think that any amount of book-keeping or treatment of these assets will be equivalent to, or the same thing as, receiving the amount in this country. The words are simple, intelligible, and represent an ordinary and simple thing. I cannot think we ought to go beyond the words themselves."

Scottish Provident Institution v. Allan (House of Lords, 1903).

A life insurance society lends money in Australia, and receives interest, which is retained there for further investment. Ultimately an amount corresponding to principal sums which have been repaid is remitted to the United Kingdom by the society's agent in Australia. It was held that the remittances were correctly treated as remittances of interest. *Lord President (in the Court of Exchequer, Scotland)*.—"It appears to me that, under the circumstances, indefinite remittances to this country must be presumed to consist of interest, not of capital, so long as the amount of capital remitted to Australia for investment still remains invested there." *Lord Chancellor*.—"This is a question of fact. Here is a large

SCHEDULE D (CASES IV AND V)—*contd.*

amount, which to my mind must include, and obviously does include, a large amount of profits. It is for the company to show, if the fact be so, that they ought to receive a certain amount of deduction, because a good deal of it was repayment of capital. No attempt has been made to do that." *Lord Shand*.—"The amount of money which was sent out by the company as capital remains in Australia. It has been gradually increased and not diminished, and that amount of money still remains there. The company still have the amount of capital which they sent out. The moneys that have come home were, therefore, in the nature of interest, and I do not think that the mere circumstances of there being such letters as are here founded upon a making them out to be capital though they are really interest can have that effect."

Scottish Widows' Fund Life Assurance Society v. Farmer.
Farmer v. Scottish Widows' Fund Life Assurance Society.
(Court of Session, Scotland, 1909.)

The Society carries on business in the United Kingdom only but part of its revenue consists of interest payable on the presentation of foreign Bearer Bonds and Mortgage Interest Notes. These are deposited in Edinburgh, but when the interest becomes due, are sent to America to be cashed. It was held that such interest, being paid in America and retained for investment there, should not, for purposes of assessment, be regarded as received here.

Lord President.—"Now, actual receipt of money, it seems to me, can only be effected in one of two ways. Either the money itself must be brought over *in specie*, or the money must be sent in the form which, according to the ordinary usages of commerce, is one of the known forms of remittance. . . . I have been absolutely unable to understand how money could be in two places at once. According to the argument of the Crown the money was received in this country the moment the bond came into the Company's safe in London or Edinburgh.

SCHEDULE D (CASES IV AND V)—*contd.*

Equally it was in America, because the day of payment had not yet come, and therefore it was, so to speak, in the pocket of the debtor. How it can be at one time both in America and in this country is, I think, a difficulty which surpasses even the powers of legal fiction. . . . Although the bearer bonds are marketable securities, that is surely neither here nor there, because in one sense everything is a marketable security at a price. The fact that a bearer bond is a marketable security and easily marketable, and therefore a negotiable instrument, does not seem to me to touch for one moment the question whether it is an ordinary form of remittance."

Scottish Provident Institution v. Farmer (Court of Session, Scotland, 1912).

The Institution received interest abroad out of which it purchased foreign bearer bonds. These bonds were sent to the United Kingdom for safe custody, but were sold here the year after. It was held that the proceeds of the sale (which were received in Edinburgh) were chargeable under Case IV in the year in which the bonds were realised.

Lord President.—"The actual earning of the interest upon which the charge is now proposed to be made was not in the year of assessment with which we are dealing; but the realisation of the earnings by means of the sale of the bonds in this country was in the year of assessment. . . . The argument for the Crown is that this has been received in Great Britain in the year of assessment and therefore must be charged. The argument for the Institution is that inasmuch as it was not earned in the year it does not fall within the Income Tax Acts at all. . . . There is nothing in the Act about a gain being necessarily within the year of assessment. Although the Act is full of the expression 'annual profits and gains,' the presence of that word 'annual' does not seem to me to connote necessarily the idea of nothing being chargeable which is not within the

SCHEDULE D (CASES IV AND V)—*contd.*

year of assessment, but it is there for the purpose of showing that this is an income, that is to say, the tax which is being levied is a tax upon income, or in other words, annual profits, and not upon capital. When a profit or an interest is earned in this country, the question really cannot arise because the profit which is earned in this country is necessarily received in this country. I use the word 'received' because you may quite well have a profit which has not been paid to you in hard cash. In many a partnership it does not pay its profits in hard cash, or a partner does not take his profits in cash, but nevertheless it is earned, and being earned it is necessarily received by the partner at the time it is earned. But when the profit is earned abroad it is not necessarily received at the same time in this country. It is, of course, received in the sense of your having a right to it there, but it is not received in this country, and accordingly this Fourth Case has said that the duty was only to be computed on sums which have been or will be received in the current year. As soon as they are received I think they become chargeable."

See *Scottish Mortgage Company of New Mexico v. McKelvie* for observations on that case.

See also under **Interest**, page 82.

Profits remitted.

Note, however, the effect of Finance Act, 1914, s. 5, page 293.

Gilbertson v. Fergusson (Court of Appeal, 1881).

A foreign bank has business abroad, and an agency here. Dividends paid in this country are in fact paid from the agency profits. It was held that such dividends must be viewed as being paid out of foreign profits constructively remitted to England for the purpose, less a proportionate part paid out of the profits of the agency already taxed under Case I. *Brett, L. J.*—"In respect of so much of the dividend as is payable out of the profits from the business carried on in England, the income tax is to be

SCHEDULE D (CASES IV AND V)—*contd.*

paid not twice but only once—but income tax is also to be paid in respect of so much of the dividend which is paid in England from the profits of business carried on in Turkey.”—*Bramwell, L. J.*—“ In the case of two partners, one living abroad and the other in England, and making equal profits and having equal shares, three-fourths of the profits would be taxed in England. It seems to me that this is not susceptible of doubt. Supposing there was only one partner who lives abroad, the whole of his profit made in England would be assessable in England, and because he has got a partner residing here, and consequently only gets half of that profit, there is no reason why the duty should not still be paid. Then there is another illustration. Suppose there was one dividend in the course of the year on English profits, and other dividend in the course of the year upon the Turkish profits, I do not see how it could be contended that the whole of the English profits should be subject to income tax, and that the English shareholders’ share of the profits that were made in Turkey must be subject to income tax. . . . The bank, when it paid its English shareholders, would have paid them with a deduction of the income tax on their portion of the English profits, but without any such deduction on their proportion of the Turkish profits, and then each shareholder would have had (on his return to the income tax commissioners) to charge himself in respect of dividends received by him on which he had not paid tax.”

Drummond v. Collins (Court of Appeal, 1914).

Under a will the trustees of a deceased person remitted from abroad such sums as they considered necessary for the maintenance of certain children resident in the United Kingdom. It was contended that such remittances were merely voluntary payments made according to the discretion of the trustees, but the Court held that sums received here were assessable under Case V of Schedule D, as foreign possessions.

SCHEDULE D (CASES IV AND V ; CASE VI) —

No deductions for expenses of distribution.

Aikin v. MacDonald's Trustees (Court of Exchequer, Scotland, 1894).

It was held that no deduction may be allowed, from an assessment under Case IV on sums remitted from abroad, in respect of the expenses incurred in the United Kingdom in distributing the sums to the persons entitled thereto under a trust. *Lord McLaren*.—"If we suppose the ordinary case of a commercial firm earning profits, and that one of the partners has died and left his share to be managed by trustees for the benefit of his family, the firm make a return to Government of their net profits, and they are assessed upon those profits. Can it be for a moment maintained that, after that return had been made, the family of the partner who has left the money to trustees are entitled to a further reduction in respect of the cost of administering this revenue through the trustees? It seems to me that in such a case the deduction would be no more claimable than in a case where an individual partner having money in many concerns chooses to employ a private secretary for the purpose of keeping an account of his income and his expenditure. . . . The only kind of deductions allowed is expenditure incurred in earning the profits, and there is no deduction in any circumstances allowable for expenditure incurred in managing profits which have already been earned and reduced into money."

Remittances after income has ceased to accrue abroad.—See *King v. Kensington Commissioners*, page 21.

Liability under Cases IV or V as against Case I.—See pages 207 to 229.

CASE VI.

The duty to be charged in respect of any annual profits or gains not falling under any of the foregoing rules, and not charged by virtue of any other Schedules.

Computation.—The nature of such profits or gains, and the grounds on which the amount thereof shall have been computed, and the average taken thereon (if any), shall be stated to the commissioners,

SCHEDULE D (ALL CASES) —

and the computation shall be made either on the amount of the full value of profits and gains received annually or according to an average of such period greater or less than one year as the case may require, and the commissioners direct. Such statement and computation shall be made to the best of the knowledge and belief of the person in receipt of the profits, or entitled thereto. (*Income Tax Act, 1842, s. 100.*)

ALL CASES.

Certificate of Deduction.—The commissioners, under the hands of two of them, may grant a certificate entitling a person paying any interest, annuity or other annual payment payable out of profits or gains charged to duty, to deduct duty therefrom. The deduction may be made without a certificate where the profits or gains concerned arise from lands, tenements, hereditaments, or heritages, any office or employment of profit, or any annuity, pension, stipend or share in public annuities. (s. 104.)

Place of Charge.—Householders (except persons engaged in trades, etc., or professions, etc.) shall be charged by the commissioners for the place where the dwelling-house is situate.

Persons engaged in trade, etc., or profession, etc., shall be charged by the commissioners for the place where the trade, etc., is carried on or exercised, whether carried on wholly or in part in Great Britain or whether engaged in one or more concerns (except where a loss from one concern is set off against the profit of another).

A person not being a householder nor engaged in trade, etc., shall be charged at his ordinary place of residence (if he has such).

A person not before described shall be charged by the commissioners for his place of residence at the time the general notices are given, or where he shall first come to reside after the time for giving the general notices. (The charge shall be valid in spite of any subsequent removal.)

Manufactures shall be charged at the place of manufacture and not at the place of sale.

Persons having more than one residence, and not being engaged in trade, etc., or profession, etc., shall be chargeable where ordinarily resident at the time when the general notices are given, or at the first place of residence after. (s. 106.)

SCHEDULE D (ALL CASES)—*contd.*

See also *Cases I and II, Rule 5*, page 291, as to place of assessment.

Docks.—Profits from the docks called the London Docks, the East and West India Docks, and Saint Katherine Dock respectively, shall be assessed by the commissioners acting for the City of London. (s. 109.)

Changes.—If a person assessed under Schedule D ceases within the year of assessment to carry on the concern, and is succeeded therein by another person, the surveyor shall, within four months from the 5th April next after such change, certify particulars to the general commissioners, with the names and addresses of both persons and the date of change if known. (*Taxes Management Act*, 1880, s. 62 (1).)

The commissioners shall give notice to both persons of a meeting for considering the certificate and shall adjust the assessment between them. (s. 62 (2).)

The determination shall be final and the assessment so adjusted shall be recoverable from the respective persons. If either person has overpaid, the overpayment shall be returned on payment by the other person. (s. 62 (3).)

See also page 287 respecting charges in proprietorship.

SCHEDULE E—

For and in respect of every public office or employment of profit, and upon every annuity, pension or stipend payable by Her Majesty or out of the public revenue of the United Kingdom, except annuities charged under Schedule C, and to be charged for every twenty shillings of the annual amount thereof. (*Income Tax Act*, 1853, s. 2.)

Persons holding offices in Ireland, and Members of Parliament usually residing in Ireland shall be chargeable to the duties. (s. 8.)

COMPUTATION.

Bray v. Brothers (*High Court of Justice*, 1897).

After making a loss for three years, an owner converted his business into a limited liability company, and became managing director at a salary. It was held that no deduction may be made, from an assessment on the salary under Schedule E, in respect of the previous losses. There was no appearance for the respondent.

SCHEDULE E—*contd.***FIRST RULE.**

On whom charged.—The duties shall be charged annually on the persons respectively having, using or exercising the offices or employments of profit, or to whom the annuities, pensions or stipends shall be payable. (*Income Tax Act, 1842, s. 146.*)

Boschoek Proprietary Co., Ltd. v. Fuke (*High Court of Justice, 1906*).

It was held that the directors of a company may not require the company to bear the income tax charged in respect of their fees unless the Articles of the company so provide. *Swinfen-Eady, J.*—"The board . . . would have no right whatever to take out of the company's moneys the sums which each director ought to pay out of his own money for any income tax properly payable by him."

See also dicta in *Tennant v. Smith* (page 308) and *Pickles v. Foster* (page 319).

Scope of Schedule.—The duties shall be charged for all salaries, fees, wages, perquisites or profits whatever, accruing by reason of such offices, employments or pensions. (*Income Tax Act, 1842, s. 146.*)

In re Rev. G. Walter Strong (*Court of Exchequer, Scotland, 1878*).

It was held that an assessment should be made on the proceeds of a voluntary subscription given annually to a minister by his congregation. *Lord Ordinary.*—"It is true that it is a voluntary contribution by the parishioners, one which they are under no obligation to make, and which they may withdraw at any time. But still it is a payment made to appellant as their clergyman, and is received in respect of the discharge of his duties."

Turner v. Cuxson (*High Court of Justice, 1888*).

A curate receives from a society a grant in recognition of faithful service generally, and not in respect of the particular curacy which he holds. The grant may be

SCHEDULE E—*contd.*

repeated annually if certain conditions are complied with. It was held that this does not accrue by reason of office and is not assessable. *Coleridge, C.J.*—"It is given to him, as it were, as a donation *honeris causa*, because for fifteen years he has worked hard and borne a good character in his profession. . . . It comes to him at the mere will of a charitable society which, at its own pleasure, pays him this as long as it shall think fit and as long as he fulfils certain somewhat onerous conditions in obtaining donations. . . . I do not think he gets this £50 a year because he has used or exercised the office or employment of profit of curate."

Herbert v. McQuade (Court of Appeal, 1902).

Grants made by the Queen Victoria Sustentation Fund in augmentation of the income of a benefice were held to be assessable on the recipient as accruing by reason of his office. *Master of the Rolls.*—"It will be seen that the Society itself abstains altogether from enquiring into the personal circumstances of the incumbent for the time being. It emphasises the fact that in dealing with a recognised fact, which in itself involves an injustice, that persons are put in charge of parishes where the duties by reason of the population, situation, and other circumstances are largely out of proportion to the income of the benefice."

Tennant v. Smith (1892).

A bank agent lived rent free in a part of the premises occupied by the bank, for whose purposes he was required to reside there. It was held that the value of his residence was not an emolument of office and should not be assessed on him or be included in his claim to abatement. *Lord Watson.*—"It is clear that the benefits, if any, which a bank agent may derive from his residence in the premises is neither salary, fee, nor wages. I do not think it comes within the category of *profit* because the ordinary acceptance appears to denote something acquired which can be turned to pecuniary account." *Lord Chancellor.*—

SCHEDULE E—contd.

"I do not deny that, if substantial things of money value were capable of being turned into money, they might for that purpose represent money's worth and be therefore taxable." *Lord Watson* also referred to the definition of *perquisites* in the 4th rule, Schedule E, which definition does not include the matter in question. *As to scope of Schedule E.—Lord Watson.*—"I agree that income arising from employment as a bank agent is assessable under Schedule E in all cases where the bank which employs him is a company or society, whether corporate or not corporate, as specified in the 3rd rule of that Schedule. I do not think it can be maintained that a public office or employment assessed under Schedule E is also liable to be assessed as an employment or vocation within the meaning of Schedule D. Everything in the shape of profit or gain arising from a public office or employment which the Legislature intended to be chargeable with duty is ascertainable under the rules of Schedule E and under these rules only."

As to claims to exemption and abatement.—Lord Watson.—"In ascertaining total income from all sources with a view to the exemption enacted by Section 8 of the Act of 1876, I am of opinion that no income arising in this country can be taken into account which is not chargeable with duty under one or other of the Income Tax Schedules. I am satisfied that the appellant is not liable to duty under any schedule (in respect of his residence)." *Lord Macnaghten.*—"It is perfectly clear that nothing is to be brought into account on a claim to relief except what is chargeable for the purposes of assessment."

McDougall v. Sutherland (Court of Exchequer, Scotland, 1894).

A minister of the Free Church of Scotland occupies a manse rent free. Following *Tennant v. Smith* it was held that the annual value thereof should not be included in a claim to abatement. *Lord Adam.*—"The dwelling-house is provided to the Respondent as minister of the

SCHEDULE E—*contd.*

congregation and is in all time coming to be used, occupied, and enjoyed by him as a manse. It does not appear to me that the right to occupy a dwelling-house on these terms is one which was intended to be convertible into money. It may be that such manses are occasionally let without objection by the trustees and if so the income so obtained will be assessable. But that cannot affect the present question."

Corke v. Fry (*Court of Exchequer, Scotland, 1895*).

A minister of the Established Church of Scotland resides rent free in a manse, of which he is in law regarded as the owner. It was held that the annual value thereof is a part of his income and should be included in his claim to abatement. *Lord President*.—"It appears to me that, for the purposes of the present question, he is the owner. I think that his right is not a right merely of personal residence but that it could be turned into money." *Lord McLaren*.—"His title is such that he is perfectly free to let the manse, if he can do so consistently with the discharge of his duties; and I cannot doubt that, for example, in a town where the manse is considered by the clergyman to be inconvenient or unsuitable he is well entitled to let it, and to provide himself with a residence elsewhere at his own expense. There being nothing in the tenure, and no law or decision of the courts, prohibiting the minister from letting his manse, it follows, in my apprehension, that he is entitled to let it."

Smyth v. Stretton (*High Court of Justice, 1904*).

Under a provident scheme for the Assistant Masters of Dulwich College their salaries were increased on their agreeing that the additions should be placed to their credit and not be payable until they should leave the college. One half also is only payable on certain contingencies. It was held that the whole sums should be assessed as part of the masters' incomes. *Channell, J.*—"The question is whether the true effect of the Scheme is to increase the salaries of the Assistant Masters, imposing

SCHEDULE E—*contd.*

at the same time an obligation upon them to deal with a portion of the increased salaries in a certain way, or is not really to increase the salaries but to give to the masters upon their ceasing to hold the position of assistant masters, gratuities or allowances. . . . I think that I am bound to hold that it did mean to increase the salaries. . . . It is not the less added to the salary because there has been a binding obligation created between the assistant masters and the governors that they should apply it in a particular way."

See also *Beaumont v. Bowers*, page 312, and *Bell v. Gribble*, page 313.

Turton v. Cooper (*High Court of Justice*, 1905).

Easter offerings are given to a clergyman because he is poor. It was held that offerings made in such a case do not accrue by reason of office. *Channell, J.*—"The payments were made to him as incumbent but would not have been made unless he had been poor."

This case is practically overruled by *Blakiston v. Cooper*.
Poynting v. Faulkner (*Court of Appeal*, 1905).

Grants are made from a fund for the augmentation of the stipends of ministers, and in distributing their funds the trustees have regard to (1) the resources of the congregation, (2) the qualifications of the minister and (3) the amount of his income. It was held that the grants accrue by reason of office. *Master of the Rolls.*—"The primary object (of the trust) was the benefit of the congregation, and, for that purpose, the raising of the standard of the ministers." *Cozens-Hardy, L. J.*—"It is none the less an augmentation of the stipend of the minister because the trustees, in considering how they should distribute an inadequate fund, have regard to the pecuniary position of the ministers."

Blakiston v. Cooper (*House of Lords*, 1906).

On the appeal of the Bishop and Churchwardens "Easter Offerings" are made to a clergyman by public collections

SCHEDULE E—*contd.*

and direct subscriptions. They are held to accrue by reason of office. *Lord Chancellor*.—"Where a sum of money is given to an incumbent substantially in respect of his services as incumbent, it accrues to him by reason of his office. Here the sum of money was given in respect of those services. Had it been a gift of an exceptional kind, such as a testimonial or a contribution for a specific purpose, as to provide for a holiday, or a subscription peculiarly due to the personal qualities of the particular clergyman, it might not have been a voluntary payment for services, but a mere present." *Lord Ashbourne*.—"It was suggested that the offerings were made as personal gifts to the Vicar as marks of esteem and respect. Such reasons no doubt played their part in obtaining and increasing the amount of the offerings, but I cannot doubt that they were given to the Vicar as Vicar."

Annuity to a minister.—See **Schedule D**, *What is Profit?* page 244.

Deductions.—Salaries are chargeable after deducting the amount of duties or other sums payable or chargeable on the same by Act of Parliament, where the same have been really and bona fide paid and borne by the party to be charged. (*Income Tax Act, 1842*, s. 146.)

Beaumont v. Bowers (*High Court of Justice, 1900*).

It was held that deductions made under an Act of Parliament from the salaries of poor law officers for the purposes of superannuation are "duties and other sums payable or chargeable" on the salary within the meaning of Section 146 (*Income Tax Act, 1842*), notwithstanding that it is provided that if an officer, who has not at the time become entitled to benefit, loses his appointment through no fault or act of his own, the whole of his contributions shall be returned to him. *Darling, J.*—"It is perfectly plain from the Superannuation Act that he might never derive the smallest benefit, that he might have this deduction made from his salary, that he might therefore never receive this money upon which it is sought to charge income tax, that he might die, or that some circumstance

SCHEDULE E—contd.

might arise which would never entitle him to anything out of the superannuation fund. . . . The only serious argument, it appears to me, is the argument which is derived from the existence of the somewhat similar provision in Section 54 of the Income Tax Act, 1853 (see page 119), and which, it is said, would have been unnecessary if the construction put upon this present statute by the Appellants to be the true one. But then, Section 54 does not cover all the ground covered by Section 146 of the Act of 1842, and Section 146 does not cover all the ground covered by Section 54."

Bell v. Gribble (Court of Appeal, 1903).

Hudson v. Gribble (Court of Appeal, 1903).

Under an Act of Parliament, deductions are made from the salaries of certain servants of a corporation, which are returnable at death or retirement (except in cases of dismissal for dishonesty). It was held that the full salaries of the servants really accrue to them and that the deductions are not duties chargeable on the office, neither are they bona fide paid and borne by the persons assessed. *Vaughan Williams, L.J.*—"The sums deducted neither fall within the words 'payable or chargeable on such salaries by virtue of Act of Parliament,' nor do they fall within the words 'bona fide paid or borne.' These sums of money never ceased to be the property of the person from whose salary or wages such sums were deducted." See also *Channell, J.*, in *Smyth v. Stretton* (1904).—" *Bell v. Gribble* and *Hudson v. Gribble* establish that a sum receivable by way of salary or wages is not the less salary or wages taxable because for some reason or another the person who receives it has not got the full right to apply it just as he likes."

See also *Smyth v. Stretton*, page 310.

One year's charge.—Each assessment shall be in force for one whole year, and be levied for such year without a new assessment, (notwithstanding that a change may have taken place in any such office or employment), on the person having or exercising the same.

SCHEDULE E—*contd.*

If any person quits the office or dies he or his executors, etc., shall be liable for arrears due, and for such further period of time as shall have elapsed (to be settled by the commissioners). The successor shall be repaid any sums paid by him on account of such portion of the year.

Each assessment shall be in force for one whole year, unless the annuity, pension or stipend shall cease or expire within the year. (*Income Tax Act*, 1842, s. 146.)

SECOND RULE.

Where assessed.—Duties shall be assessed by the commissioners (for all the offices in each department) in the place where the officers shall execute their offices, and be due and payable from the respective officers and their respective successors for the time being.

THIRD RULE.

Description of offices to be charged.—All public offices and employments of profit of the description hereinafter mentioned within Great Britain (*now Great Britain and Ireland*—see under **Ireland**); any office belonging to either House of Parliament; any court of justice in England, Scotland, Wales, Duchy of Lancaster, or Cornwall; any criminal, justiciary, or ecclesiastical court; any court of admiralty, commissary court, or court-martial; any public office held under the civil government of Her Majesty, or in a county palatine, or Duchy of Cornwall; any commissioned officer of Her Majesty's Army, any officer in the navy, militia, or volunteers; any office or employment or profit under an ecclesiastical body, or under any public corporation, or under any company or society, whether corporate or not corporate, or under any public institution, or public foundation of whatever nature; any office or employment of profit in any county, riding, etc., or in any city, borough, town corporate, or place, or under any trusts or guardians of any fund, etc., in such county, etc., and every other public office or employment of profit of a public nature. (*Income Tax Act*, 1842, s. 146.)

Attorney-General v. Lancashire and Yorkshire Railway Co. (*High Court of Justice*, 1864.)

It was held that engine drivers, porters, labourers and

SCHEDULE E—*contd.*

other persons employed by a railway company at weekly wages are not persons occupying a "public office or employment of profit of a public nature." They are therefore, assessable under Schedule D, and the company is not required to collect income tax from them. *Martin, B.*—"It seems to me to be only necessary to look at Schedules E and D (Case II) to see more clearly that they fall under Schedule D."

The Court did not desire or in any way suggest what employees could be said to occupy a "public office, etc."

Langston v. Glasson (High Court of Justice, 1891).

A college bursar appointed in accordance with an Act of Parliament is liable to be assessed for his salary under Schedule E. *Pollock, B.*—"If we could find that this gentleman was a member of the collegiate body and was merely taking his share of the collegiate property, then he would not be taxed; but if he receives a salary out of such income, then, though it is said that that only applies to persons who are not members, it seems to me that there is no hardship in respect of the direction (*i.e.*, of the Board of Inland Revenue to charge by assessment on the recipient)." *Charles, J.*—"It is suggested that the Crown will receive income tax twice, because the £450 has already paid income tax in the hands of the Corporation itself. It ought not to have been so for, by the 54th Section of the Act of 1842 (see page 61), whereby it is provided that officers of a corporation are to prepare statements of their profits and gains, it is provided that 'nothing herein before contained shall be construed to require in such statement the inclusion of salaries, wages, or profits of any officer of such a corporation, etc.' We think that this gentleman is an officer chargeable under Schedule E and, if that be so, there is no necessity for the officers of the college to have included the amount of his salary in the statement of their profits and gains."

SCHEDULE E—*contd.***FOURTH RULE.**

The Perquisites to be assessed shall be deemed to be such profits of offices and employments as arise from fees or other emoluments and are payable either by the Crown or the subject, and may be estimated either on the profits of the preceding year or on the fair and just average of one year of the amount thereof in the three years preceding ; such years ending on 5th April in each year or on such other day of each year on which the accounts of such profits have been usually made up. (*Income Tax Act*, 1842, s. 146.)

FIFTH RULE.

Stopping of duties.—Duties on salaries, fees, wages or other perquisites or profits, or any annuities, pensions or stipends payable at any public office, or by any officer of Her Majesty's household, or by any of Her Majesty's receivers or paymasters, shall be stopped out of the same, and applied to the satisfaction of the duties. Where assessed by the general commissioners they shall transmit an account of the duty assessed to the office where it is payable, and duty shall be stopped out of the salary, etc.

SIXTH RULE.

Duties on salaries, etc., not arising from offices mentioned in Rule 5 shall be detained and stopped out of the same, and applied to the satisfaction of the duties.

See *Luna v. Liverpool School*, page 108.

SEVENTH RULE.

Charges.—Such portion of the duties as are charged with any sum of money payable to any other person shall be deducted out of such sum as a like rate on such sum would amount to.

EIGHTH RULE.

Deputies.—Duty paid by the principal in an office upon salary paid to his deputy or clerk shall be deducted out of such salary.

NINTH RULE.

Expenses.—In estimating the duty payable for any such office, etc., all official deductions and payments made upon receipt of the salaries, fees, wages, perquisites, and profits thereof, or in passing the

SCHEDULE E—*contd.*

accounts belonging to such office, etc., or upon receipt of such pension, etc., shall be allowed to be deducted, provided that a due account thereof shall be rendered to the satisfaction of the commissioners. (*Income Tax Act, 1842, s. 146.*)

In assessing duty in respect of any public office or employment, where the person exercising the same is necessarily obliged to incur and defray out of the salary, fees or emoluments the expenses of travelling in the performance of the duties thereof, or of keeping and maintaining a horse to enable him to perform the same, or otherwise to lay out and expend money wholly, exclusively and necessarily in the performance of his office or employment, it shall be lawful for him to deduct from the amount of salary to be assessed the amount of all such expenses and disbursements necessarily incurred and defrayed as aforesaid. (*Income Tax Act, 1853, s. 51.*)

Where the Treasury are satisfied with respect to any class of persons in receipt of any salary, fees, or emoluments payable out of the public revenue that such persons are obliged to lay out and expend money wholly, exclusively, and necessarily in the performance of the duties in respect of which such salary, fees, or emoluments are payable, the Treasury may fix such sum as in their opinion represents a fair equivalent of the average annual amount laid out and expended as aforesaid by persons of that class, and in assessing the income tax on the salary, fees, or emoluments of persons of that class, there shall be deducted from the amount thereof the sums so fixed by the Treasury. Provided that if any person would, but for the provisions of this section, be entitled to deduct a larger amount than the sum so fixed, that sum may be deducted instead of the sum so fixed. (*Finance Act, 1913, s. 3.*)

Bowers v. Harding (High Court of Justice, 1891).

It was held (1) that the office of National Schoolmaster and Mistress (being held in this case by a man and his wife appointed at a joint salary) is a public office within the meaning of Schedule E; also (2) that no deduction may be made from the assessment thereon in respect of the wages of a domestic servant engaged at home while the wife is at school. (1) *Charles, J.*—" (An) ingenious

SCHEDULE E—*contd.*

argument was presented to us, that the real meaning of the arrangement which the managers of the school made with him is this, that he is to be paid only a part of the £150 a year, and his wife to be paid another part, not necessarily £75 a year each, but his wife is to be paid a part at all events of the £150. If (this) is right, even to the extent of £10, then the master's income would fall below the taxable limit. (*The exemption limit in 1891 was £150.*) But I cannot come to any such conclusion in this case. . . . It is suggested that since the passing of the Married Women's Property Act of 1882, her portion, whatever it is, is her own money and not part of taxable income. I do not see that in this case I can say that any part is joint salary belonging to her in that sense. It is joint salary paid through the managers to the husband for the services of husband and wife." (2) *Pollock, B.*—"Can it be said that because the wife, who would otherwise possibly or probably be engaged in looking after the household affairs of her husband, is unable to look after those affairs by reason of her devoting her time to earning this salary in question, can it be said that because that state of things exists that he or she is expending money wholly or exclusively and necessarily in the performance of the duties of their office or employment? . . . It seems to me to be wholly nullifying the intention of the Act that any such deduction should be made."

Cook v. Knott (High Court of Justice, 1887).

It was held that a solicitor residing and carrying on his profession at Worcester may not deduct, from an assessment on him as Clerk to the Justices at Bromyard, the expenses of travelling from Worcester to perform his duties at Bromyard. *Pollock, B.*—"It cannot be said that his travelling from the place where he lives, whether near or far, to the place where he has to discharge his duties, is a travelling in the performance of those duties." *Hawkins, J.*—"I cannot see any difference in this case, and the case of a man having an office in

SCHEDULE E—*contd.*

London who chooses for his own convenience or pleasure or domestic necessity, as the case may be, to live and occupy a house at Brighton, and pay for his ticket up to town every day."

Revell v. Directors of Elworthy & Co., Ltd. (*High Court of Justice*, 1890).

The directors of a company are not allowed to deduct from assessments in respect of their fees the expenses of travelling from their residences to the place of meeting of the company. The Secretary of the company stated before the commissioners that the sum of £200 was allowed by the company to defray the expenses of and to remunerate the directors for their services, and that he paid the directors their out-of-pocket expenses and divided the balance of the sum voted equally between them. There was no appearance in Court for the company. *Stephen, J.*—"We must decide it according to the authority of *Cook v. Knott*."

See also under **Clergymen**—page 44.

TENTH RULE.

Annuities.—Annuities or pensions payable out of any particular branch of the public revenue shall be charged by the commissioners for that department. (*Income Tax Act*, 1842, s. 146.)

GENERAL.

Assessments at Head Office.—Persons assessed for offices shall be deemed to have exercised the same at the head office of the department under which the office shall be held, although the duties of such office or employment shall be performed or the profits or any part thereof shall be payable elsewhere, within or out of the United Kingdom. (*Income Tax Act*, 1842, s. 147.)

Pickles v. Foster (*King's Bench Division*).

The appellant was manager in West Africa for a company whose head office was in Liverpool. The agreements under which he served were entered into in England. It was held that offices of employment under a company exercised out of the United Kingdom do not come within the description of offices chargeable by Section 147 of

SCHEDULE E—*contd.*

the Income Tax Act, 1842. The appeal was allowed. *Horridge, J.*—"It seems to me that the word 'department' has a well-known and defined meaning, and applies to cases in which somebody is in an employment or office which has a 'department.'" The question of liability under Schedule D (see *Rogers v. Inland Revenue*, page 208) was not dealt with in this case, although the appellant's wife and family resided in a house in Rochdale rented by him.

Returns.—Statements of profits arising from offices chargeable before the commissioners for their department shall not be required under a general notice. (*Income Tax Act*, 1842, s. 151.)

Exemption.—The full value of every office shall be stated in the assessment although exemption is claimed. (s. 152.)

See also page 2 as to claims to exemption.

Apportionment.—Deputies in receipt of profits shall be assessed for the principals. Duties on salaries, etc., apportioned between officers shall be accounted for by the person receiving the same (who is personally liable) before apportionment. (s. 153.)

Assessors.—Assessors shall be furnished with accounts of salaries, etc., in public departments, and may require returns of salaries and profits of offices.

They shall make up assessments from documents in their offices and deliver them to the commissioners.

An account of money stopped shall be kept. (s. 154.)

Levy.—Duties on offices which cannot be stopped shall be certified in case of non-payment, to the commissioners for the district where the officers reside, who shall issue their warrants for levying the same. (s. 155.)

Deduction.—Duties shall be detained at such times in each year as the said sums shall be payable to the persons entitled thereto. (s. 158.)

Increases during the year—see **Assessments—Additional**, page 22.

SCOTLAND—SPECIAL PROVISIONS—

¹ **Collectors.**—The Treasury shall appoint collectors for land tax and the duties.

The Treasury may appoint distributors of stamps or other persons to be collectors.

¹ Refers also to House Duty.

SCOTLAND—SPECIAL PROVISIONS—*contd.*

Such salaries as the Treasury think fit shall be granted, and office shall be held during the will of the Treasury or the Board.

Security shall be given.

No county or burgh shall be liable to reassessment.

If a person other than a distributor of stamps is appointed, a return showing his name and salary shall be laid before Parliament within twenty-one days of the commencement of its next session. (*Taxes Management Act, 1880, s. 81.*)

¹ **Recovery.**—Upon the collector certifying that any of the duties or land tax are due and not paid, the general commissioners or land tax commissioners, respectively, or sheriff depute or substitute for the county shall issue a warrant for the collector recovering the amount due by poinding or distraining the goods and effects of any person entered in his certificate as a defaulter. (s. 97 (1).)

The warrant shall be executed by the constables or sheriff's officers of the county. (s. 97 (2).)

No moveable goods and effects of the defaulter shall be liable to be taken by virtue of any poinding, sequestration or diligence whatever, or by any assignation, unless the person taking them shall pay the sum due, which shall not be claimed for more than one year. If more than one year's tax is claimed he need pay for one year only. If he refuses to pay for one year, the sums so claimed shall be recovered by the goods notwithstanding his seizure, under warrant obtained in conformity with Taxes Management Act, 1880, s. 97. (*Revenue Act, 1884, s. 7 (2).*)

The goods distrained shall be kept where the same were distrained or in another place of which the owner shall have notice, for five days, in the custody of the officer or constable, unless within that period the arrears and costs are paid to the officer. (*Taxes Management Act, 1880, s. 97 (3).*)

After five days the goods shall be valued and appraised by any two persons appointed by the officer or constable (which persons shall be obliged to act under a penalty of forty shillings), and shall be sold at not less than the value. (s. 97 (4).)

The sum shall be applied firstly to the payment of the duties or land tax owing, and then to the officer or constable at two shillings

¹ Refers also to House Duty.

SCOTLAND—SPECIAL PROVISIONS—*contd.*

per pound of the duties, unless the owner redeems the goods by payment of the appraised value within five days after the valuation. (s. 97 (5).)

Any surplus shall be returned to the owner. (s. 97 (6).)

If no purchaser appears at the sale, the sheriff depute shall lodge the goods, and, if not redeemed by the owner within five days, they shall be sold as the sheriff shall appoint, he being liable to pay the duties to the collector, and the fees due to the officer who distrained. He shall further be entitled to one shilling per pound of the value of the goods. (s. 97 (7).)

The expense of preserving the goods and maintaining the cattle, if any, shall be allowed to the officer and the sheriff.

Where no sufficient goods or effects are found, the commissioners, or the sheriff depute or substitute may, by warrant, commit the defaulter to prison, there to be kept without bail until payment is made or security given. (s. 97 (8).)

Every auctioneer or seller by commission selling in Scotland any goods or effects whatsoever, by any mode of sale at auction, shall, at least three days before the sale, give a signed notice of the sale, with particulars of the name and address of the person whose goods are to be sold, to the collector for the district where the sale will be held. (s. 97 (9).)

Assessors.—The commissioners of supply of each county, and the magistrates of each burgh in Scotland respectively, may, if they think fit, appoint the officer or officers of inland revenue having the survey of the income tax and assessed taxes within such county or borough to be the assessor or assessors for the purposes of the Lands Valuation (Scotland) Act, 1854 ; in such case the expense attending the making up of valuation rolls by such officer or officers shall be defrayed by the commissioners of inland revenue. (*Lands Valuation (Scotland) Act 1857*, s. 1.)

If such appointment is not made, no valuation shall be conclusive against any assessment of any taxes under the management of the commissioners of inland revenue. (s. 3.)

In re William Menzies (In the Exchequer, Scotland, 1877).

In a district where the surveyor of taxes is not appointed assessor under the Lands Valuation (Scotland) Acts, the assessment to income tax is to be made under the rules

SCOTLAND—SPECIAL PROVISIONS—*contd.*

of the Income Tax Acts and is not bound to be that adopted under the Valuation Acts.

Where an officer of inland revenue has been appointed to be an assessor for the purposes of the Lands Valuation (Scotland) Act, 1854, no other person shall be appointed to be the assessor for the district or division of such officer for the duties to which the Taxes Management Act (1880) relates.

Provided that a person acting at the time of the passing of this act may be reappointed. (*Revenue Act, 1884, s. 7 (3).*)

Lord Advocate v. General Commissioners of Income Tax for Cuninghame Division of Ayrshire (Court of Exchequer, Scotland, 1895).

The commissioners appointed as income tax assessor the clerk of the person lately holding that position. They were ordered to cancel the appointment and to appoint the surveyor of taxes.

Tolls.—On due proof to the special commissioners, the duty on so much of the tolls (commonly known as customs) levied in any burgh, by Act of Parliament or charter, as shall have been expended in or towards defraying the expenses of paving, lighting or cleansing, or of the police, or of any similar public burden, shall be repaid in like manner as in the cases in Schedule A, No. V, Income Tax Act, 1842. (*Income Tax Act, 1853, s. 38.*)

Landlord's burden.—Where it shall be proved to the commissioners of inland revenue that the landlord of lands in Scotland is by law charged with any public rates, taxes or assessments which in England are by law a charge on the occupiers, or that such landlord is by law charged with any public rates or taxes or other public burdens the like whereof are not chargeable in England, the said commissioners shall cause relief (by abatement from the assessment or by repayment) to be given in respect of such rates, taxes, assessments and public burdens. (*Taxes Act, 1856, s. 1.*)

General.

Lands in more than one jurisdiction—see under **Parishes**, page 124.

Commissioners—see under **Commissioners, General**, page 56.

Payment in Postage Stamps or Post Office Orders—see under **Collection**, page 47.

SPECIAL ASSESSMENTS AND APPEALS—

Assessment.—A person chargeable under Schedule D may require all proceedings for assessment to be before the special commissioners, provided that notice is given within the time limited for returns.

Surveyor or inspector shall examine the return and assess the duties he considers chargeable; he shall send a certificate of assessment with the return to the special commissioners.

Special commissioners shall examine the same, and make or sign the assessment appearing to them to be just, which shall be subject to appeal by the person assessed or to objection by the surveyor. Such appeal or objection shall be heard by the special commissioners directed by the commissioners of inland revenue to hear appeals in that district.

If required, the special commissioners shall state a case, on appeal, for transmission to the commissioners of inland revenue who shall finally decide it.

The sum due shall be notified by the special commissioners to the person assessed who shall pay it to the Accountant and Controller-General or to the officer for receipt, at the time and in the manner directed by the special commissioners.

In default of payment, the special commissioners shall send a duplicate of the assessment with their warrant, to the local collector, who shall levy. (*Income Tax Act, 1842, s. 131.*)

An extract from any assessment made by the special commissioners shall be a sufficient authority to the proper collector of inland revenue to whom it may be transmitted to receive, bring to account and give discharges for the duties included in such extract. (*Taxes Management Act, 1880, s. 94.*)

Notice requiring assessment by the special commissioners shall be sent, with the return, to the assessor, and shall be transmitted by him to the surveyor. (*Income Tax Act, 1842, s. 49.*)

Appeals shall be allowed to two or more special commissioners from any Schedule D assessment, any surveyor's objection, or any surcharge. The determination of the special commissioners shall be final. (s. 130.)

Claims to exemption shall be determined by the general commissioners and not by the special commissioners. (s. 130.)

Appeal shall be allowed to the special commissioners from any

SPECIAL ASSESSMENTS AND APPEALS—*contd.*

assessment in respect of any mines or of quarries of stone or slate. (*Income Tax Act, 1860, s. 7.*)

SPECIAL COMMISSIONERS—

Definition.—The commissioners for the special purposes of the Income Tax Acts, appointed by the Treasury under the Income Tax Act, 1842. (*Taxes Management Act, 1880, s. 5.*)

Nothing in the Taxes Management Act, 1880, shall affect the powers of the special commissioners. (s. 8 (1).)

Commissioners of inland revenue and persons appointed special commissioners shall be the commissioners for special purposes.

Appointment shall be made by Treasury warrant, of so many persons as the Treasury think expedient. The names and salaries shall be laid before Parliament within twenty days. (*Income Tax Act, 1842, s. 23.*)

No qualification is required. (s. 15.)

Salary and incidental expenses shall be allowed as the Treasury direct. (s. 23 and s. 186).

Quorum.—Two may act as quorum. (s. 191.)

Inquiries shall be answered by affidavit before a general commissioner. Except when they are acting as general commissioners, or on any appeal, the special commissioners may not summon any person before them. (s. 23.)

Powers are granted as to other commissioners as far as they relate to the jurisdiction of the special commissioners. (s. 23.)

Powers are granted as to other commissioners as to making, signing and allowing assessments and hearing appeals. (s. 132.)

Functions.—Allowances in No. VI, Schedule A. Special exemptions under Schedule C. Charging and assessing the profits arising from annuities, dividends and shares of annuities paid in Great Britain out of the revenues of any foreign state. Examining, auditing, etc., the books and accounts of dividends delivered to the commissioners of inland revenue. Any other act, matter or thing directed to be done by them. (s. 23.) See also under **Super-tax.**

STAMP DUTY—

No receipt, certificate of payment, affidavit, appraisement or

STAMP DUTY—*contd.*

valuation given in pursuance of and for the purpose of this Act shall be liable to stamp duty. (*Income Tax Act, 1842, s. 179.*)

SUPER-TAX—

Charge for the financial years 1909-10 to 1913-14 inclusive.—In addition to the income tax charged at the current rate there shall be charged, levied and paid in respect of the income of any individual the total of which from all sources exceeds £5,000, an additional duty of income tax (in this Act referred to as a super-tax) at the rate of 6d. for every pound of the amount by which the total income exceeds £3,000. (*Finance (1909-10) Act, 1910, s. 66 (1).*)

Charge for the financial year 1914-15.—In addition to the income tax charged at the rate of 1s. 3d. under this Act there shall be charged, levied, and paid for the year beginning on the sixth day of April, 1914, in respect of the income of any individual, the total of which from all sources exceeds £3,000, an additional duty of income tax (in this Act referred to as super-tax) at the following rates—

In respect of the first £2,500 of the income	..	..	nil.
In respect of the excess over £2,500—			
for every pound of the first £500 of the excess	..		5d.
for every pound of the next £1,000 of the excess	..		7d.
for every pound of the next £1,000 of the excess	..		9d.
for every pound of the next £1,000 of the excess	..		11d.
for every pound of the next £1,000 of the excess	..	1s.	1d.
for every pound of the next £1,000 of the excess	..	1s.	3d.
for every pound of the remainder of the excess	..	1s.	4d.

(*Finance Act, 1914, s. 3 (1).*)

Assessment.—For the purposes of the super-tax, the total income of any individual from all sources shall be taken to be the total income of that individual from all sources for the previous year, estimated in the same manner as the total income from all sources is estimated for the purpose of exemptions or abatements under the Income Tax Acts. (*Finance (1909-10) Act, 1910, s. 66 (2).*)

In the case of the death of a person liable to super-tax during any year for which super-tax is charged, a part only of the year's

SUPER-TAX—*contd.*

super-tax shall be payable proportionate to the part of the year which has elapsed before the date of death. (*Finance Act, 1912, s. 6.*)

Hill v. Inland Revenue (Court of Session, Scotland, 1912).

For purposes of a return for super-tax assessment a person sought to claim an adjustment under the Customs and Inland Revenue Act, s. 23 (see page 30) in respect of losses incurred in working certain farms. He had not made any application in respect of such losses for purposes of assessment to income tax. It was held that he was entitled to make an application under the section referred to for purposes of super-tax. *Lord Johnston*.—(Referring to s. 66 (2), of the Finance Act, 1910)—“Nor is there anything to indicate that the Special Commissioners are bound by the previous assessments or barred from going behind them. The subsection then proceeds to say that the total income from all sources is . . . *to be estimated*, not is *to be taken as if it has been estimated*, and accordingly an estimate in ‘manner’ prescribed is required.”

Gaunt v. Inland Revenue (High Court of Justice, 1913).

It was held that, for purposes of assessment to super-tax, the income derived by the person to be assessed from a business in which he was partner should be taken to be the share to which he was entitled of the profits of the business in the preceeding year, such profits of the business being ascertained on an average of the three years preceding that year. (See *Finance Act, 1907, s. 20, page 73.*)

Brooks v. Commissioners of Inland Revenue (Court of Appeal, 1913).

It was held (one judge dissenting) that an assessment made under Schedule D by the general commissioners in a previous year is not binding for purposes of an assessment to super-tax. The person assessed may reopen the matter before the special commissioners. *Cozens-Hardy, M.R.*—“A duty is imposed by statute upon the special commissioners to ‘estimate’ the total income, and for

SUPER-TAX—*contd.*

that purpose to consider the statement (if any) submitted by the subject. If the subject says that the sum upon which he paid income tax under Schedule D was not accurate, I see no reason why he should be estopped from raising the point. The special commissioners have ample powers to check the statement, and they can either allow or reject the subject's claim."

Deductions.—In estimating the income of the previous year for the purpose of super-tax—

- (a) there shall be deducted, in respect of any land on which income tax is charged upon the annual value estimated otherwise than in relation to profits (in addition to any other deduction) any sum by which the assessment is reduced under the Finance Act, 1894, s. 35 (*Repairs*), or on which duty has been repaid under s. 69 of this Act (*Maintenance*, etc.), (and, for 1914-15, might have been repaid had the restriction removed in 1914 been removed in 1913—*Finance Act*, 1914, s. 3). (See under **Schedule A**, page 189);
- (b) there shall be deducted the amount of any premiums in respect of which relief from income tax may be allowed under *Income Tax Act*, 1853, s. 54 as extended by any subsequent enactment. (See **Life Insurance**, page 118);
- (c) there shall be deducted, in the case of a person in the service of the Crown abroad, any such sum as the Treasury may allow for expenses which in their opinion are necessarily incidental to the discharge of the functions of his office, and for which an allowance has not already been made;

Year of Assessment.—(d) any income chargeable by way of deduction shall be deemed to be income of the year in which it is receivable, and any deductions allowable on account of any sums paid out of the property or profits of the individual shall be allowed as deductions in respect of the year in which they are payable (notwithstanding that, in whole or part, the income or sums accrued before that year). (*Finance (1909-10) Act*, 1910, s. 66 (2).)

Special Commissioners shall assess and charge the super-tax. (s. 72 (1).)

SUPER TAX—*contd.*

Returns.—Every person upon whom a notice is served, in the manner prescribed by the special commissioners by regulations under this section, requiring him to make a return of his total income from all sources (or, in the case of a notice served upon any person liable to be assessed under Income Tax Act, 1842, or Customs and Inland Revenue Act, 1890, s. 24, as representing an incapacitated, non-resident or deceased person, of the total income of such person) shall, whether chargeable or not, make a return in the form and within the time required by the notice. (s. 72 (2).)

It shall be the duty of every person chargeable to give notice that he is chargeable to the special commissioners before September 30th in the year for which the super-tax is chargeable. (s. 72 (3).)

Failure to return—see **Penalties**, page 132.

If any person fails to make a return, or if the special commissioners are not satisfied with any return, the special commissioners may make an assessment according to the best of their judgment. (s. 72 (5).)

Husband and Wife.—Where a husband is required to make a return of his total income from all sources for the purpose of super-tax and part of that total income is the income of his wife, the special commissioners may, if for any reason they consider that they are unable to obtain a satisfactory return of the wife's income from the husband, require the wife to make a return of her income, and in that case the wife shall be under the like obligation to make a return as if she were not married, and the husband shall be relieved from any obligation to make such a return as respects the income of the wife. (*Revenue Act*, 1911, s. 11 (1).)

Where super-tax is charged in a case where the wife has been required to make a return such part of the total sum payable in respect of the super-tax as bears the same proportion to that total sum as the wife's income bears to the total income shall be assessed on and recoverable from the wife in lieu of the husband. (s. 11 (2).)

This section shall have effect with respect to the super-tax charged for the year beginning the sixth day of April, nineteen hundred and nine, and for any subsequent year. (s. 11 (3).)

Section 11 does not apply as from 1914-15. (Finance Act, 1914, s. 9 (4).) See page 79.

SUPER TAX—*contd.*

All provisions of the **Income Tax Acts** relating to persons who are chargeable, assessments, appeals against assessments, collection and recovery of duty, and to cases for the opinion of the High Court shall, so far as they are applicable, apply to super-tax.

The special commissioners shall, for purposes of assessment, have any powers of an inspector or surveyor of taxes.

For the purpose of the representation of the Crown on any appeal before the special commissioners, any person so nominated by the Board shall have the same powers at and upon the determination of the appeal as a surveyor of taxes has under the Income Tax Acts. (*Finance (1909-10) Act, 1910, s. 72 (6).*)

Additional Assessments.—The special commissioners may amend any assessment made by them, or make an assessment or an additional assessment, during any time within the year of assessment or within three years after the expiration thereof. (*s. 72 (7).*)

Regulations for the purpose of carrying this section into effect may be made by the Board. (*s. 72 (8).*)

Regulations to the following effect have been made by the Commissioners of Inland Revenue—

- (1) The Special Commissioners shall serve a notice in the prescribed form on every person whom they may require to make a return.
- (2) Super-tax shall be assessed at the office of the Special Commissioners in London. Notice of the amount of the assessment and of the duty charged shall be served by the Special Commissioners on every person assessed.
- (3) Any person aggrieved by an assessment may give notice of appeal to the Special Commissioners (stating the grounds) within twenty-eight days of the service of the notice of assessment or such further period as the Special Commissioners may allow. Appeals shall be heard in London, Edinburgh, Dublin, and such other towns as the Commissioners of Inland Revenue may direct.
- (4) The super-tax payable shall be remitted to the Accountant-General of Inland Revenue, Somerset House, London, on or before 1st January each year.
- (5) Any notice required to be served by these regulations may be delivered to the person concerned, or left at his last known

SUPER TAX—*contd.*

place of abode, or sent by prepaid registered letter addressed to such person at his usual or last known place of abode. Such service shall be deemed sufficient.

Annual Charge.—Super-tax is an annual charge. The following provisions are included in the Finance Act for 1914—

All such enactments relating to super-tax as were in force with respect to the super-tax granted for the year beginning on the sixth day of April, 1913, shall have full force and effect with respect to any duties granted under this section. (*Finance Act, 1914, s. 3 (2).*)

Bowles v. Attorney-General (High Court of Justice, 1911).

It was held that the provisions of the Customs and Inland Revenue Act, 1890, s. 30 (see page 9), apply to super-tax. *Parker, J.*—"The super-tax is in fact an income-tax. It is referred to in the Act which imposes it as an additional duty of income tax (see page 326). It is collected and recovered by means (with some special and additional provisions) of the ordinary income tax machinery. It is intended, like the ordinary income tax, to be a permanent tax though imposed annually only. It is imposed and its collection regulated by sections contained in a part of the Act which is entitled 'Income Tax,' and is to be read with all existing enactments relating to income tax, including Section 30 of the Customs and Inland Revenue Act, 1890. Under these circumstances, can there be any doubt that it is a duty of income tax within the meaning of the 30th Section of the last-mentioned Act? In my opinion there cannot."

SURVEYOR—

¹**Definition.**—Inspector or surveyor of taxes appointed by the Treasury or the Board for the purposes of this Act, the Tax Acts and Land Tax Acts, and acting under the authority of the Board. (*Taxes Management Act, 1880, s. 5.*)

Appointment shall be made by the Treasury, who may pay necessary expenses. (s. 17).

¹ Surveyor shall act as Assessor, (1) where assessors are not appointed

¹ Refers also to House Duty.

SURVEYOR—*contd.*

- in any parish or do not act before the time limited, until the assessors are appointed or do act (s. 43 (1).) ;
- (2) under Schedules A and B and for Inhabited House Duty, in the Metropolis (s. 43 (2)) ;
 - (3) where the annual value adopted during any year is required to be taken as the annual value for the subsequent year. (The surveyor shall act as assessor in the subsequent year for Schedules A and B and Inhabited House Duty.) (*Finance Act*, 1896, s. 30.)

¹ **Report to Commissioners.**—Surveyor in England may report to the land tax or general commissioners :—

- (a) in any matter touching the conduct of any collector,
- (b) in every case of failure to assess or charge duties,
- (c) „ „ „ „ „ „ raise or pay the sums charged,
- (d) „ „ „ „ „ „ of the clerk to the commissioners in making out any duplicate or in any other act required, stating

(a) particulars of the complaint, and

(b) what in his opinion ought to be done. (*Taxes Management Act*, 1880, s. 115 (1).)

On such a report, the commissioners shall summon a meeting within a reasonable time, of which meeting the surveyor shall have notice and shall attend and assist in the consideration of measures necessary and expedient. (s. 115 (2).)

Function in adjusting assessments.—See *Smiles v. Northern Investment Co. of New Zealand*, under **Schedule D**, *Case IV*, page 296.

Penalties.—See page 129.

TRADE UNIONS—

Any trade union duly registered under the Trade Union Acts, 1871 and 1876, shall be exempt from income tax under Schedules A, C and D in respect of the interest and dividends of the trade union applicable and applied solely for the purpose of provident benefits. (*Trade Union (Provident Funds) Act*, 1893, s. 1.)

Exemption shall not extend to any trade union by whose rules the

¹ Refers also to House Duty.

TRADE UNIONS—*contd.*

amount assured to any member, etc., shall exceed £200, or an annuity be paid which shall exceed £30 per annum.

(Instead of £200 and £30 read £300 and £52 respectively. (*Finance* (1909-10) *Act*, 1910, s. 70. (s. 1).)

Exemption shall be claimed as in respect of income applicable to charitable purposes. (*Trade Union (Provident Funds)* 1893, s. 2.)

UNIVERSITIES—

Schedule A.—As to public buildings see Schedule A, No. VI *Income Tax Act*, 1842, s. 60, page 183.

For repairs to collegiate churches and chapels see Schedule A No. V, 3. (s. 60), page 181.

¹**Oxford and Cambridge Universities.**—(a) Any college or hall attached to or associated with the University of Oxford, and all offices and employments in connection therewith, and persons residing therein, shall be within the jurisdiction of the general commissioners for that University.

(b) The general commissioners for the University of Cambridge shall be the commissioners for the said duties in respect of all the University buildings and the colleges, halls and public hostels attached to and associated with that University, and of all offices and employments in connection therewith, and of the profits or gains of all persons residing therein.

(c) Each of the said jurisdictions shall be deemed to be one parish or place for the purposes of assessment and collection. (*Customs and Inland Revenue Act*, 1890, s. 28.)

VOTING—

Non-payment of income tax in respect of any house or building shall not disqualify a person from voting in Parliamentary Elections. (*Income Tax Act*, 1842, s. 184.)

¹ Refers also to House Duty.

PART II

INHABITED HOUSE DUTY

INHABITED House Duty is charged by the House Tax Act, 1851, s. 1, under the powers and provisions of previous Acts. For these provisions and also for those of subsequent Acts, see under the succeeding headings according to subject, viz., **Basis of Charge; Collection; Exemptions; Premises; Rates of Duty; Rules for Assessing; Year of Assessment.**

It should be observed that, since the Taxes Management Act, 1880, most of the machinery for assessing, collecting and managing the duty has been identical with that operating as regards income tax. There are accordingly certain provisions included in the Income Tax portion of this book which refer also to House Duty. They are marked by a foot-note and occur under the following subject-headings—

	PAGE
Accounts	5
Assessments	9
Assessors	36
Charge Duplicates	39
Collection	46
Collectors	51
Double Assessment	70
Forms	73
High Court Cases	76
Insupers	82
Parishes, Divisions, etc.. .. .	123
Penalties	125
Proceedings	138
Remuneration	144
Schedule of Arrears	154
Schedule of Deficiencies	155
Schedules A and B (Continuance of Assessments and Metropolis)	198, 200

								PAGE
Scotland	..	..	..	..	..	..	..	320
Surveyor	..	..	..	..	..	..	..	331
Universities	..	..	..	..	..	..	..	333

BASIS OF CHARGE—

INHABITED DWELLING-HOUSES.

The charge is upon inhabited dwelling-houses in and throughout Great Britain. (*House Tax Act*, 1851, s. 1.)

Riley v. Read (*High Court of Justice*, 1879).

A working men's club uses the ground floor of a building for its ordinary purposes, and lets the upper portion to an auctioneer. No person sleeps on the premises. It was held that the premises are not an inhabited dwelling-house. *Lord Chief Baron*.—"In my judgment 'to dwell' is really to live in a house; that is, to live there day and night; to sleep there during the night and to occupy it for the purposes of life during the day." *Baron Pollock*.—"It is the case of a great number of persons using the building not in any sense for the purpose of a dwelling-house, but merely as a place to which they may resort for recreation, etc."

Smith v. Dauney (*High Court of Justice*, 1904).

A dwelling-house is not used for residence or sleeping during the whole of the year of assessment, but it is furnished ready for use if required. It was held to be an inhabited dwelling-house. *Channel, J.*—"A house is to be deemed to be an inhabited dwelling-house if in point of fact there is an occupier of it—if this house is ready to be slept in when the owner or anybody he sends wants to sleep there, it is inhabited within the meaning of those Statutes."

School Buildings do not form an inhabited house.—See *Charter-house School v. Gayler*, page 358, and *Clifton College v. Tompson*, page 359. . . .

ANNUAL VALUE.

Duty is payable according to annual value (*House Tax Act*, 1851, s. 1) and

BASIS OF CHARGE—*contd.*

for every inhabited dwelling-house, which, with the household and other offices, yards and gardens therewith occupied and charged, is or shall be worth the rent of twenty pounds or upwards by the year. (*House Tax Act, 1851, Schedule B.*)

As to the exclusion of moveable subjects from assessment, see *Campbell v. Inland Revenue*, page 158. See also the rating cases on pages 158 to 160 as to the inclusion of fixtures.

COLLECTION—

Where duty is charged on the landlord or owner of any dwelling-house let in different apartments, stories, etc., and not on the occupiers thereof, and the landlord or owner shall not reside in the parish or shall not have sufficient goods in the parish for levying, and shall leave the duty unpaid for twenty days, the collector may demand and levy it from the tenants or any of them, who shall pay the amount due and are authorised to deduct it from the rent. (*House Tax Act, 1803, s. 55, and House Tax Act, 1808, Schedule B, Rule 6.*)

[As regards other enactments respecting collection see page 334.]

EXEMPTIONS—**GENERAL.**

Notice of claim to exemption shall be given to the assessor. (*House Tax Act, 1803, s. 17.*)

Exemption may not be granted by letters patent, grants or charters. (*House Tax Act, 1803, s. 77.*)

PREMISES EXEMPTED.

Market garden or nursery ground occupied by a market gardener or nurseryman, bona fide for the sale of the produce thereof in the way of his trade or business. (*House Tax Act, 1851, s. 3.*)

Warehouses and buildings upon or near adjoining to wharfs occupied by wharfingers who have dwelling-houses upon the said wharfs for the residence of themselves or servants employed upon the said wharfs.

And also such warehouses as are distinct and separate buildings and not parts or parcels of dwelling-houses or shops attached thereto, but employed solely for lodging goods, wares, and merchandise or

EXEMPTIONS—*contd.*

for carrying on some manufacture, notwithstanding the same may adjoin to or have communication with the dwelling-house or shop. (*House Tax Act, 1808. Schedule B. Rule 3.*)

In re British and Foreign Bible Society (In the Exchequer, England, 1875).

It was held that the society's warehouse comes within the exemption, although it has internal communication with a building used for residence as well as for business.

Maple & Co., Ltd. v. Wilson (High Court of Justice, 1901).

Exemption was claimed for certain shops having communication with residential portions of a building. It was refused. *Kennedy, J.*—"These are not warehouses. They are described as shops and show-rooms. They do not come within the term of the exemption."

Crown Premises.—Any house belonging to Her Majesty or any of the Royal Family, and every public office for which duties have heretofore been paid by Her Majesty or out of the public revenue. (*House Tax Act, 1808. Schedule B. Exemption 1.*)

Hospital, charity school or house provided for the reception or relief of poor persons. (*House Tax Act, 1808. Schedule B. Exemption IV.*)

Jepson v. Gribble (In the Exchequer, England, 1876).

It was held that exemption should be extended to the house within the City of London County Lunatic Asylum grounds, provided, by statute, for the Medical Superintendent. *Relf, C.B.*—"This asylum is strictly within those words (of Exemption 4, Schedule B, House Tax Act, 1808), and the question is whether the residence of the medical superintendent is a part of the premises. . . . Here the house is to be part and parcel of the asylum itself."

Wilson v. Fasson (Court of Exchequer, Scotland, 1883).

It was held that exemption should be extended to the house within the precincts of the Royal Infirmary, Edinburgh, provided for the Medical Superintendent who is required by the managers to reside there. *Lord President.*

EXEMPTIONS—*contd.*

—"We are told that it (the residence) is not a statutory necessity. But the absolute requirement of the exigencies of the hospital itself is just as strong a necessity."

Cawse v. Nottingham Lunatic Hospital (High Court of Justice, 1891).

See under Income Tax, page 184, for a statement of this case, and also for judgments as affecting income tax. *Pollock, J.*—As to house duty:—"The argument that I have stated with regard to income tax seems to apply to this. The hospital has always been, and to my mind still is, a hospital provided for the relief of poor persons, although considerable moneys have been received by taking in persons who can pay." *Charles, J.*—"The exemption must be construed in the same manner as the exemption in the Income Tax Act. The word hospital includes the case of a hospital which has a substantial charitable endowment."

Musgrave v. Dundee Royal Lunatic Asylum (Court of Exchequer, Scotland, 1895).

A lunatic asylum receives private paying patients, and also patients paid for by the District Board of Lunacy. It was founded by donations and subscriptions, but the endowment suffices to maintain two lunatics only. It was held that the asylum is not exempt from house duty. *Lord McLaren.*—" (1) I do not think it necessary to exemption that the inhabited house should be exclusively appropriated to charity, but it would certainly appear that it must be an institution in whole or in part substantially appropriated to charitable purposes."

" (2) The maintenance of these pauper lunatics being paid for by money raised by public taxation cannot be considered as charity." *Lord Adam.*—"I do not think it necessary that there should be endowment in the technical sense of the word, but that it will be sufficient to bring an institution within the exemption of the Act if it be maintained in whole or in part by voluntary contributions."

EXEMPTIONS—*contd.*

Trustees of Mary Clark Home v. Anderson (*High Court of Justice*, 1904).

See under income tax, page 185, for a statement of this case. *Channell, J.*—"The exemptions (Income Tax and Inhabited House Duty) are practically identical as regards this instruction."

Charterhouse School v. Lamarque (*High Court of Justice*, 1890).

A school was originally endowed and founded as a hospital for old men. At present it is a public school in which all but 60 scholars pay large fees. It was held that the school is not now a hospital or charity school and that duty must be paid thereon. *Hawkins, J.*—"When a school is mainly self-supporting, we do not think it can properly be called a charity school because a small proportion of the scholars derive benefit from the charitable foundation. *Needham v. Bowers* decided that the exemption must be restricted to Hospitals maintained wholly or in part by charity, but the judges clearly had no such case as is now before us in their minds. One mode of testing whether this is a charity school will be by considering whether by far the larger portion of the school could not be carried on without aid derived from the charitable foundation."

Southwell v. Governors of Holloway College (*High Court of Justice*, 1895).

A college for young women is supported partly by endowment, and partly by the pupils' fees, which range upwards from £90 per annum. The total fees amount to about half the income from endowments. Exemption was refused. *Charles, J.*—"The language of the Schedule contemplates institutions whose primary object is the maintenance or education of those who cannot, in the one case, afford to maintain themselves, or, in the other case, to pay for their own education; institutions, in other words, eleemosynary in character. A 'hospital' certainly is primarily intended to receive patients who do not pay for their treatment. 'A house provided

EXEMPTIONS—*contd.*

for the reception or relief of poor persons ' is a poor-house and nothing else. And the words 'charity school' must in my opinion be interpreted, having regard to the preceding and succeeding words, as 'school primarily intended for the supply of gratuitous education.' If that condition is fulfilled then the exemption will be available even although the pupils contribute toward the expense of education. But in this case there does not appear to have ever been an intention to supply gratuitous instruction to any pupil, rich or poor. I say 'rich or poor' because many 'charities' may exist which are not for the relief of mere pecuniary necessity."

Governors of Bradford Grammar School v. Northwood
(*High Court of Justice*, 1905).

The school is supported by endowments, fees, and grants from the Board of Education and public bodies. The headmaster's house and the gymnasium are within the same curtilage as the school and the headmaster is required to live in the former. He pays no rent for it and may not permit any other person to reside there without the governors' permission. It was held that the governors are the occupiers of this house, which is therefore occupied with the school. The assessment should include the whole premises. *Phillimore, J.*—As to Parliamentary grant:—"Such a grant is not eleemosynary, and a school which receives such a grant is not thereby a charity school." As to endowments:—"The proportion which the emoluments (from endowments) bear to other sources is smaller than in the *Holloway Case*." (See *Southwell v. Holloway College*.)

Needham v. Bowers (*High Court of Justice*, 1888).

For a statement of the case, see under Income Tax, page 184. *Charles, J.*—As to Inhabited House Duty:—"The exemption which specifies hospitals along with charity schools and poor-houses must be construed in the same manner as the exemptions in the Income Tax Act, 1842." See also *Reith v. Westminster School*, page 361.

EXEMPTIONS—*contd.*

Business Premises.—On proof that a person, or persons in partnership, occupy a tenement or building, or part of a tenement or building, previously occupied for residence, wholly as a house for the purposes of trade only, or as a warehouse for the sole purpose of lodging goods, wares or merchandise, or as a shop or counting-house, no person inhabiting, dwelling or abiding therein, except in the daytime only for trade purposes, the commissioners may discharge the assessment for that year. (*House Tax Act, 1817, s. 1.*)

It shall not be necessary to prove, nor shall proof be required, that such occupier resides in a distinct dwelling-house or part of a dwelling-house. (*Revenue Act, 1867, s. 25.*)

[.] But such premises (as in *House Tax Act, 1817, s. 1*) may be brought into assessment as a dwelling-house, and any person intending to claim exemption shall give notice to the assessor or to the surveyor.

The assessor or surveyor shall be admitted to inspect at all times in the daytime, internally and externally, and shall enquire and examine into the uses and purposes to which the same is or has been employed. On discovery of any other use than aforesaid, or of its being inhabited at night, the commissioners are required to assess. (*House Tax Act, 1817, s. 2.*)

Such exemption may be granted for entire quarters, but no claim shall be allowed to any person who shall occupy the premises as a dwelling-house, and as a tenement or building for the purposes of exemption, at different periods during one year of assessment, nor unless the occupier quitting or the occupier commencing occupation shall previously give notice to the assessor or the surveyor. (*House Tax Act, 1832, s. 3.*)

Where any house, being one property, shall be divided into and let in different tenements, and any of such tenements are occupied solely for the purpose of any trade or business or of any profession or calling by which the occupier seeks a livelihood or profit, or are unoccupied, the person chargeable as occupier may give notice to the surveyor of taxes during the year of assessment, stating the facts. On proof, the commissioners shall grant relief, so as to confine the duty on the assessment to the duty on the value assessable if it had been a house comprising only the tenements other than those occupied as aforesaid. (*Customs and Inland Revenue Act, 1878, s. 13 (1).*)

EXEMPTIONS—*contd.*

Every house or tenement which is occupied solely for the purposes of any trade or business, or of any profession or calling by which the occupier seeks a livelihood or profit shall be exempted by the commissioners, on proof of the facts, although a servant or other person may dwell in such house or tenement for the protection thereof. (s. 13 (2).)

“ Servant ” shall be deemed to mean and include only a menial or domestic servant employed by the occupier.

“ Other person ” shall be deemed to mean any person of a similar grade or description not otherwise employed by the occupier, who shall be engaged by him, to dwell in the house or tenement, solely for the protection thereof. (*Customs and Inland Revenue Act, 1881, s. 24.*)

The fact that the husband or wife of a caretaker, or other member of the family of a caretaker, or the servant of a caretaker, dwells in any house or tenement together with the caretaker, shall not be of itself sufficient to deprive the house or tenement of the benefit of any exemption under Schedule B, Case V, of the House Tax Act, 1808, or Subsection (2) of Section 13 of the Customs and Inland Revenue Act, 1878. (*Finance Act, 1911, s. 15.*)

Business Premises (occupied solely for purposes of profit).

In re Glasgow Coal Exchange Co., Ltd. (Court of Exchequer, Scotland, 1879).

A hall is erected and used as a coal exchange. It was held that occasional letting for other purposes does not deprive it of exemption. *Lord President.*—“ The Coal Exchange Company use these premises primarily as a coal exchange ; but at other times when they are not wanted for the coal exchange they are let for balls, bazaars, and other temporary purposes of that description. Now I do not think that interferes in the least degree with the central fact of this case, that the company are carrying on these premises for profit or gain, the business of a coal exchange.”

Young v. Douglas (Court of Exchequer, Scotland, 1879).

The exemption granted to premises used solely for purposes of trade does not extend to an hotel although the

EXEMPTIONS—*contd.*

hotel-keeper and his family reside elsewhere. *Lord President*.—"I know of no other purpose to which this house is put, except that of a dwelling-house, and it appears to be quite immaterial whether the person who occupies the house is himself the only dweller in the house, or whether he entertains a great variety of guests for limited periods, who pay for the accommodation which they receive." For the rest of the case see under **Premises**, page 357.

In re Ainslie (Court of Exchequer, Scotland, 1881).

It was held that a farmhouse occupied by the tenant thereof (in this case through his servants) is not occupied by a person in trade.

Smiles v. Merchant Company of Edinburgh (Court of Exchequer, Scotland, 1889).

Certain rooms in the company's premises are used by its secretary for the company's business, but also for his own business as Law Agent. It was held that the premises are not occupied solely for the purposes of the occupier's business. *Lord President*.—"The condition of exemption there is that the tenement occupied must be occupied solely for the purposes of the trade or business of the occupier. The occupier in this case is the Merchant Company, but it is quite plain upon the statute in this case that the premises are not occupied solely for the purposes of the occupier's business."

London Library v. Carter (High Court of Justice, 1890).

The London Library has reading rooms for its members, and an attendant and his wife sleep on the premises. Held that the house is not exempt as the library does not contemplate making a profit. *Pollock, B.*—"The words 'by which the occupier seeks a livelihood or profit' govern the whole of the previous part of the subsection. . . . The London Library is not a house which is

EXEMPTIONS—*contd.*

inhabited for the purposes of business or profession or calling whence any profits arise. . . . It is not found that this man (the attendant) is a mere caretaker and no more, and the obvious and fair inference is that this man does inhabit that house and dwell in it for the benefit of the members of the library. . . .

“. . . . Schedule B, Case 5 (48 Geo. III, c. 55) is not intended to meet the case, which constantly occurs, of a servant of the owner being left in the house, not merely for the purpose of taking care of it, though that is one of the purposes, and indeed the principal purpose, but he is there as a servant of the owner to take care of the house and to be ready to wait upon him when he comes to dwell there.”

Muat v. Stewart (Court of Exchequer, Scotland, 1890).

A landowner uses premises as an office for the management of his estates. Exemption was refused. *Clerk, L. J.*—“The appellant does not use these premises for the purpose of making a livelihood or profit. No doubt, what he lives on comes from his property which is managed there; but that is a very different thing from making a livelihood by carrying on a trade or a business or a profession or a calling in that office.” Also see *Lord Moncrieff in Scottish Widows' Fund v. Allan*—“In *Muat v. Stewart* the premises were occupied simply to enable Sir Michael Shaw Stewart to transact the business connected with the management of his funds and estates more conveniently than he could do in his own house.”

British Institute of Preventive Medicine v. Styles (High Court of Justice, 1895).

Premises are occupied by an institution which applies any profit it may make to the furtherance of its objects in connection with certain diseases. Exemption was refused. *Grantham, J.*—“Here it cannot be said that it is a trade whereby the occupier seeks a livelihood or profit.”

EXEMPTIONS—*contd.*

Scottish Widows Fund and Life Assurance Society v. Allan.

Scottish Equitable Life Insurance Society v. Allan.

Scottish Provident Institution v. Allan.

(*Court of Exchequer, Scotland, 1900*).

It was held that premises used for the concerns of a Mutual Life Insurance Society are within the exemption. *Lord Trayner*.—"That they carry on a business is clear. Is it not a business from which they seek to make a profit? I can hardly suppose the business is carried on with any other view. It certainly results in profits being made. It is said that profit does not arise from life insurance, and that is true. But the profitable investment of the Society's funds is an integral part of the Insurance Company's business." Also as to the words '*occupied solely*.'—"This, it is now contended for the surveyor, means premises on which no business is transacted or anything done except in pursuit of profits. The word '*solely*,' in my opinion, only qualifies the occupation and does not refer to or qualify the business."

Business Premises (Caretaker).

Yewens v. Noakes (Court of Appeal, 1880).

Certain business premises are resided on by a clerk employed by the owners thereof at a salary of £150 per annum. It was held that he is not a "servant or other person" within the meaning of s. 13 (2).

Weguelin v. Wyatt (High Court of Justice, 1885).

Certain business premises are resided in by a caretaker, but also by her son, a clerk employed by a firm unconnected with the premises. It was held that, having regard to his residence there, exemption should not be allowed. *Mathew, J.*—"I gather that the mother stipulated that her son should live in the house when she was caretaker. That is not a condition of things contemplated by the Statute." *Smith, J.*—"Assuming the son did not go there at the request of the mother but at the request of the owner of the house, then the owner of the house has two caretakers. The Statute only says

EXEMPTIONS—*contd.*

that you are to have one." Now see *Finance Act, 1911*, s. 15, page 239.

Forbes v. Standard Life Assurance Co. (Court of Exchequer, Scotland, 1894).

The messengers of an Insurance company reside on its premises for the general purpose of its business. It was held that they are not included in the expression "servant or other person" in s. 13 (2). *Lord President*.—"These two messengers who live in this one house are not there for the protection of the premises, but for the general purposes of the business. The Standard Company rested their appeal on the fact that the messengers were servants absolutely necessary for what?—for their business, and not merely for the protection of their premises. That puts the company entirely out of court."

(It was considered unnecessary to decide whether the residence of *two* caretakers would deprive the building of the title to exemption.) Now see *Finance Act, 1911*, s. 15, page 239.

Stablemen living in stables, not for the protection thereof, see *Lambton v. Kerr* under **Premises**, page 358.

Business Premises (Tenements—English Decisions).

Yorkshire Fire and Life Insurance Co. v. Clayton (Court of Appeal, 1881).

Premises are occupied partly by the company as offices, partly by a bank and professional men as offices, and partly as a residence for certain curates. There is internal communication between all the parts. It was held that, for the purposes of the exemption, there must be structural divisions between portions separately let, other than the ordinary divisions into rooms. *Lindley, J.*—"I do not think the exemption does apply to a case where a landlord occupies any part of the house for the purposes of residence or business." *Master of the Rolls*.—"The word 'tenement' is used as what is in law a house, although it is at the same time part of a house. The whole enactment means this:—' . . . a practice has

EXEMPTIONS—*contd.*

grown up of putting separate houses one above the other so that they are all superimposed upon the same site or piece of ground. They are commonly called houses built in separate flats or stories ; but for all legal purposes and for all ordinary usage purposes they are separate houses. Each house has a separate door, is separately let, is separately occupied, and has no connection or relation with those above it or below it, except deriving support from the house instead of from the ground below.' That is the fair meaning of the section and we should entirely frustrate it if we gave the enlarged meaning that is suggested on the part of the appellants."

Chapman v. Royal Bank of Scotland (High Court of Justice, 1881).

A part of the ground floor and basement of a building was occupied by the owners. It was separated from the rest of the premises by a party wall and had its own entrance from the street. It was held to be a separate house. The question whether the landlord's occupation deprived it of exemption was not determined. *Huddleston, B.*—"This is a building structurally separated from all the rest of the house, without an outer door, in which persons may live if they choose, but which must in the legal and in the ordinary parlance be to all intents and purposes a house ; and inasmuch as it is a house within the House Tax Act, 1808, and occupied merely for the purposes of trade within the House Tax Act, 1817, s. 1, we think that it is exempt from the rating to inhabited house duty." *Hawkins, J.*—"I can conceive it impossible to say that this is not a house which is entirely and absolutely isolated from every other part of the building, so that no access can be had from it to the building, or from the rest of the building to it, but has a separate door upon the street."

Lord Walsingham v. Styles (High Court of Justice, 1894).

A block of buildings contains separate tenements structurally divided from each other, and also some single rooms. Some of the latter are reserved for use by

EXEMPTIONS—*contd.*

tenants, and some for the owner's servants who provide meals, etc., for the tenants. The tenements are rated separately but it was held that, for house duty purposes, the house is not divided and let in different tenements. *Mathew, J.*—"It is clear that in this block of buildings a large part is let out in separate tenements, but the remainder are separate rooms opening upon a corridor. There are servants' rooms and offices used for the purpose of supplying those who are living in the flats with their meals. It is impossible to come to the conclusion that this is a property divided and let in different tenements substantially, though one tenement is not let but is held by the landlord and is devoted to other purposes than of habitation."

Hoddinott v. Home and Colonial Stores, Ltd. (High Court of Justice, 1896).

A company uses the ground floor of a building it holds on lease, for the purposes of its business. It lets the upper part for residence. The two parts have separate entrances and the door between them has been screwed up. It was held that exemption may not be granted under s. 13 (1). The effect of s. 13 (2) was not dealt with. *Wright, J.*—"I cannot see that a carpentry division may not be just as effectual as a bricklayer's division on the premises . . . The words 'let in different tenements' do not include a case where the general lessor has let the whole of the premises to one tenant, and that tenant sublets a part and occupies the rest. If you read the section as if it referred to the letting by the superior landlord, the section does not apply because the superior landlord has not divided the house and let it in separate tenements. If you read the section as referring to inferior landlords, it cannot apply, because the respondents have not let the shop at all."

Grant v. Langston (House of Lords, 1900).

A house is divided into two portions which are not internally connected. They are both occupied by the

EXEMPTIONS—*contd.*

owner, the lower portion for the purposes of his business and the upper portion as a residence. It was held that exemption may be allowed to the lower portion as a distinct house under s. 13 (2). *Lord Chancellor*.—"The house which is here described is undoubtedly capable of being let in a separate property or separately leased." *Lord Davey*.—"The first subsection applies to a house being one property, which is divided into and let in different tenements. Two conditions are required. It must be both divided into and also let in different tenements. It has been decided in England that there must be a physical division of the house into different tenements, and that the word 'tenement' is used in order to comprise the different kinds of things (such as shops, warehouses or offices) into which a house may be divided. The second subsection exempts every 'house or tenement which is occupied solely for the purposes of any trade, etc.' The words are perfectly general. There is nothing about letting. The owner may be the occupier of the tenement." *Lord Macnaghten*.—"There is not in ss. 2 of s. 13, 1878, anything requiring that, when a tenement or part of a house used for trade purposes only is a portion of a building the rest of which is used as a dwelling-house, the two portions must be 'distinct properties' in order to enable the occupier of the trade premises to claim exemption." (The two portions form separate houses.)

London and Westminster Bank v. Smith (House of Lords, 1902).

A building owned by a Bank contains floors used by itself for business purposes, floors let to solicitors for offices, and floors occupied by the Bank's manager for residence. There is communication throughout by means of a staircase and a door from the staircase to the bank's business premises on the ground floor. Exemption was not allowed under either subsection of s. 13. *Lord Macnaghten*.—"The fact that the owner occupies part of the house would be fatal to a claim under that section even

EXEMPTIONS—*contd.*

if there were a sufficient structural division." *Lord Brampton*.—"A mere contractual division would by no means satisfy the language of the statute. I am, however, far from saying that such divisions must be made by permanent brick walls or timber partitions. Possibly heavy doors kept firmly locked and bolted might suffice. Each case ought to be made to depend on its own particular circumstances. . . . The building must be treated as one house only. It cannot, having regard to its particular structural arrangement, be treated as a house being one property divided and let in different tenements occupied solely for the purposes of trades, etc."

Nichols v. Malim (High Court of Justice, 1905).

A solicitor's residence and his office form two separate buildings within the same yard. It was held that house duty is chargeable on their combined annual value. *Walton, J.*—"You had to pass without going outside the curtilage, from one to the other."

Knight v. Manley (High Court of Justice, 1905).

A building is divided into an office used by a firm of solicitors (of which the owner of the building is senior partner), and a residential portion let to the owner's sister. There is communication between them by means of a door through which the sister's servants have access to the office to clean it. Exemption was refused in respect of the offices. *Phillimore, J.* (following *London & Western Bank v. Smith*).—"I think that this is all one house." As to claim under Customs and Inland Revenue Act, 1878, s. 13, ss. 1.—"I do not think it necessary that the doors should be kept always locked. I do not think it necessary that the doors should be locked at all. Nor do I see that it necessarily would be wrong, if the proper ceremonies were observed, for the owners of one block to enter through the door and make a call upon the owners of the other. But—it is in the very contemplation of the lettings that these properties should not be used separately. The servants have access to the whole house. Each of

EXEMPTIONS—*contd.*

the tenants have rights with regard to these servants. I think, for these reasons, this property is not separately let." Note.—The Crown did not pursue the contention that stables in the yard, let to a third tenant, should be assessed with the house.

Hillman v. Ankerson (*High Court of Justice*, 1906).

The following points were decided in connection with certain premises, which consisted of shops and residences let to various tenants. (1) The relief afforded by the Customs and Island Revenue Act, 1878, s. 13 (1) (see p. 341), was refused, as one of the shops had internal communication with the part common to the residences. (2) The Revenue Act, 1903, s. 11, which refers to a house which, "so far as it is used as a dwelling-house, is used for the sole purpose of providing separate dwellings" (see p. 369), was held not to apply, as one of the lettings was a shop as well as a dwelling. (3) The exemption afforded to a tenement by the Customs and Inland Revenue Act, 1878, s. 13 (2) (see p. 342), was held not to be taken away by reason of the tenant thereof having the use of a closet in the residential portion, which he could only get at from his shop by going out into the street and entering by another door.

See also *Foster v. Athenaeum Newsroom and Library* (*Liverpool*) (1907) under **Premises**, page 360.

Business Premises (Tenements.—Scotch Decisions.)

It will be remembered that a decision in the House of Lords (see above—"English Decisions") has superior force in Scotland as well as in England.

In re Commercial Bank of Scotland (*Court of Exchequer, Scotland*, 1879).

A building is divided into two parts, between which there is no internal communication. The first part is occupied by a bank as offices, the second is granted to the bank's agent, but (with the bank's consent) is let by him to a third party. It was held that the whole building is

EXEMPTIONS—*contd.*

chargeable in one sum. *Judge in Court of Exchequer.*—
“The property consists of a dwelling-house and bank office, which, although they have no internal communication with one another, are yet attached to each other. Both are in the occupation of the Bank through their agent and it is immaterial that the agent lets the dwelling-house to a third party, as the party is removable at the pleasure of the appellants, and his occupation is just the occupation of the appellants. Section 13, ss. 1, is not to take effect where the property is all in one occupation. Section 13, ss. 2, was not intended to exempt tenements attached to dwelling-houses although such tenements are used for purposes of trade, unless those can be shown to fall within ss. 1.”

In re Scottish Widows' Fund and Life Assurance Society
(*Court of Exchequer, Scotland, 1880*).

An assessment is made on the offices of the society and on a flat above them occupied rent free by the company's cashier. The flat has no connection with the offices and is entered by a staircase under the roof of the next house. It was held that the whole was correctly charged to house duty. *Lord President.*—“Part of this assessable subject is occupied by another man altogether as a dwelling-house and therefore it cannot be affirmed in the words of the exemption (s. 13, ss. 2), that the tenement is occupied solely for business purposes.”

Banks v. Glasgow and South Western Railway Co.
(*Court of Exchequer, Scotland, 1880*).

A building has six floors, all having internal connection and all occupied by a railway company. The four lower floors are used as offices. The two floors remaining communicate with and are used with an hotel in the adjoining premises. Following the *Scottish Widows' Fund* case it was held that the exemption in Section 13 does not apply.

EXEMPTIONS—*contd.*

In re Cowan and Strachan (Court of Exchequer, Scotland, 1880).

Premises consist of a shop with three flats over it, all being entered from one staircase. The shop and two flats are used for business purposes. The third flat is resided in by a salesman. It was held that the exemption does not apply to any portion of the premises. *Lord President*.—"There is really internal communication between the dwelling-house and portions of the building. Under Rule 3, Schedule B, Household Tax Act, 1808, the whole premises are assessable as a dwelling-house, with business premises attached."

Russell v. Coutts (Court of Exchequer, Scotland, 1881).

Premises consist of a house, resided in by the owner, offices, occupied by a firm (the owner and his partner), and a further office, occupied by the owner. There is internal communication throughout. It was held that the offices occupied by the firm do not form a separate tenement entitled to exemption. *Lord President*.—"The word 'tenement' in this statute is a part of a house so divided and separated as to be capable of being a distinct property or a distinct subject of lease." *Lord Mure*.—"I cannot hold that, where premises of that sort have a door which is in frequent use as a means of communication between them and the other part of his house, I cannot hold that this is a structural division in the sense which is necessary to make a distinct and separate tenement of that description."

Corke v. Brims (Court of Exchequer, Scotland, 1883).

Premises are divided into two portions, one being used for residence and the other for the business of a bank. Both portions are entered from a vestibule opening from the street. The vestibule has three doors, two leading to bank premises and one to the residence. There was formerly communication between the two portions through a door (A.B.) but, as this is now nailed up and never

EXEMPTIONS—*contd.*

opened, there is no way of passing from one to the other save through the vestibule. It was held that the premises are divided so that the exemption of s. 13 (1) applies. *Lord President*.—"There is a small lobby or vestibule from which three doors open; one into the bank only; another into the bank consulting room, and the third is the outer door of Mr. Mackay's house; and when he has once entered in at that door and shut it behind him he cannot obtain access from the premises in which he finds himself to any other part of the building, except that which is occupied by him as his residence." *Lord Shand*.—"If the door A.B. had been a door which was open and used, the case would have been different."

Nisbet v. M'Innes, Mackenzie and Lochhead (Court of Exchequer, Scotland, 1884).

A building consists of two tenements which have no internal communication. The first is occupied as offices by a firm whose individual partners own the building as individual property. The second is occupied by one of the partners as a residence. It was held that duty is chargeable on the residential portion as a separate house.

Allan v. Thomson (Court of Exchequer, Scotland, 1884).

Allan v. Gilchrist (Court of Exchequer, Scotland, 1884).

Premises include two tenements between which there is no internal communication. They are both occupied by the same person, the first as business premises, and the second as a residence. It was held that the former should not be included in the assessment.

Clerk v. British Linen Co. (Court of Exchequer, Scotland, 1885).

The ground floor of a house is used partly by the owners as a bank and partly by a tenant as offices. There is internal communication between these parts. The first floor is occupied as offices by the same tenant and communicates with his part of the ground floor. The second

EXEMPTIONS—*contd.*

floor is resided on by the bank's accountant and is connected with its portion of the ground floor. Exemption of any part was refused. *Lord President*.—"When he is in his house on the upper floor he has the means of obtaining access to every other part of the building. There is no part of the building with which he cannot communicate without going into the outer body."

Smiles v. Crooke (Court of Exchequer, Scotland, 1886).

A photographer holds three flats under one lease. One flat is used as a studio and is a distinct tenement. The other flats are used as a residence. It was held that the first mentioned flat should be exempt under s. 13 (1). *Lord President*.—"I do not think that 'divided into and let in different tenements' necessarily means let to different tenants, or let by different leases."

Allan v. Miller (Court of Exchequer, Scotland, 1889).

A house is divided into two distinct tenements, both of which are held by one tenant at a cumulo rent. It was held that each should be regarded separately under s. 13 (1).

British Linen Company v. Forbes (Court of Exchequer, Scotland, 1892).

Following the *Scottish Widows' Fund* case, it was held that one assessment should be made on the whole of a building owned by a bank, part of which is used for its business purposes, and another part (unconnected with the former) as a residence by the bank secretary.

Union Bank of Scotland v. Foster (Court of Exchequer, 1901).

A house owned by a bank is divided into two portions, which have internal communication. The first portion is occupied by the bank as offices, and the second portion by the bank's accountant as a residence. It was held that exemption may not be allowed under either subsections of s. 13. As to ss. 1, this follows *Grant v. Langston*. As to ss. 2:—*Lord McLaren*.—"It must

EXEMPTION—*contd.*

be shown that the part of the building which is appropriated to the business is a 'house or tenement' taken by itself and independently of its physical connection with the part occupied as the accountant's house."

Cotton's Trustees v. Farmer (Court of Session, Scotland, 1913).

It was held that the Customs and Inland Revenue Act, 1878, s. 13 (1), does not require, as a condition of exemption, that a flat should be self-contained. The doors of its various rooms may open on to a staircase used in common with other flats.

An appeal to the House of Lords is pending.

Unoccupied houses.—Any house or tenement from which the owner or occupier shall have bona fide removed, and which is wholly unfurnished at the time of making the assessment, shall be deemed unoccupied and not liable to assessment, although left to the charge of a person or servant who shall dwell therein solely for the purpose of airing the same and of preventing injury to the premises.

If the house is occupied again it shall be charged. A house becoming unoccupied during the year may be discharged from duty for entire quarters. (*House Tax Act, 1825, s. 3.*)

Every house whereof the keeping is committed to the care of any person or servant who does not pay rates to the poor, and who resides therein for the purpose only of taking care thereof shall be exempted.

(In this case the assessment is to be made, and exemption afterwards allowed by the commissioners. *House Tax Act, 1808. Schedule B. Exemption V.*)

See page 342 for provisions of Finance Act, 1911, s. 15.

PREMISES INCLUDED IN THE ASSESSMENT—

Offices, etc., belonging to and occupied with the house.—The assessment on the house includes "the household and other offices, yards and gardens therewith occupied." (*House Tax Act, 1851. Schedule.*)

Every coach-house, stable, brewhouse, wash-house, laundry,

PREMISES INCLUDED IN THE ASSESSMENT— *con'd.*

wood-house, dairy and all other offices, and all yards, courts and curtilages and gardens and pleasure grounds, belonging to and occupied with any dwelling-house, shall, in charging the said duties, be valued together with such dwelling-house; provided that no more than one acre of such gardens and pleasure grounds shall in any case be so valued. (*House Tax Act, 1808. Schedule B. Rule 2.*)

Young v. Douglas (Court of Exchequer, Scotland, 1879).

An hotel-keeper rents, under a separate lease, certain stables behind his hotel, and uses them in connection with his business. It was held that they should be included in the assessment on the hotel.

As to the claim under s. 13, ss. 2:—Lord Shand.—“He is carrying on a business, there is no doubt, but the business he is carrying on is to use the building as a dwelling-house.”

As to s. 13, ss. 1:—Lord President.—“The object of that provision is to alter the 6th Rule (Schedule B, House Tax Act, 1808), but not to interfere with the 2nd Rule. The stables and hotel are occupied together and for one combined purpose.” *Lord Deas.*—“It depends on whether the landlord is carrying on a separate kind of business in his stables and offices from that which is carried on in the hotel. In this case the occupation of the stables and offices is so connected with the hotel and the business carried on in that hotel that they must be regarded as one and the same concern.”

For the rest of the case see under **Exemptions**, page 342.

Smith v. Petrie (Court of Exchequer, Scotland, 1892).

An hotel-keeper rents certain stables separated from his hotel by a public thoroughfare. It was held that they should be included with the house for purposes of assessment. *Lord President.*—“I think that these stables are occupied with this house—they are an adjunct of the dwelling-house and not the less because they are

PREMISES INCLUDED IN THE ASSESSMENT— *contd.*

separated by a passage over which other persons have a right to go.

Cheape v. Kinmont (Court of Exchequer, Scotland, 1888).

A hunt committee provides residences for its servants and also stables and kennels (without internal communication with the residences), for the purposes of hunting. It was held that one assessment should be made on the whole. *Lord President*.—"They are all occupied for one and the same general purpose. The fact of the different buildings having separate entrances and no internal communication has no relevancy."

Lambton v. Kerr (High Court of Justice, 1895).

It was held that one assessment should be made on the total annual value of premises which consist of the stables of a trainer of horses and a dwelling-house occupied by his stablemen. *Charles, J.*—"The stables and this dwelling-house were being used for a common purpose, namely for the purpose of training horses."

As to the claim to exemption under Customs and Inland Revenue Act, 1878:—"The last clause seems to exclude the case where the premises are occupied, not only for business, but also for the actual dwelling of persons who are not mere caretakers but the servants of the occupier."

Charterhouse School v. Gayler (High Court of Justice, 1896).

The headmaster and two assistant masters occupy houses within the school grounds. The latter pay rent for their houses. All three receive boys as boarders. It was held that the masters are the occupiers of the houses concerned, and that the school buildings, which are separately occupied, are not inhabited dwelling-houses. *Wright, J.*—"The headmaster ought to be treated as the occupier of the house. The turning-point is that he occupies the building for the purpose of keeping boarders there for his own profit. The same thing applies to the other masters' houses."

PREMISES INCLUDED IN THE ASSESSMENT— *contd.*

Clifton College v. Thompson (High Court of Justice, 1896).

The headmaster rents, under a lease, a house which is not joined to the school buildings. It was held that he is the occupier thereof and that the school buildings are not in the same occupation. It was also held that school buildings do not form an inhabited house. *Wright, J.*—“The headmaster is not bound to reside in the house which he does occupy, and there is nothing to show that his occupation is in any degree less than the occupation of any ordinary tenant, except that the lease will come to an end if he ceases to hold the office of headmaster. In all other respects he seems to be in the fullest sense in the occupation of the house. I do not think it can be said that he occupies the various matters outside his own house; there is nothing to show that those belong to and are occupied with the master’s dwelling-house. The matters just mentioned do not appear to be matters that can be treated as inhabited dwelling-houses at all. The weight of authority in this country is to the effect that nothing is inhabited as a dwelling-house for the purposes of these Acts unless someone sleeps there as distinguished from Scottish leads.”

Swain v. Fleming (High Court of Justice, 1899).

An innkeeper rents an inn (including stables), and from a separate landlord he rents other stables also for the purposes of his business. It was held that all the premises concerned should be assessed in one sum. *Darling, J.*—“The second set of stables are occupied by the innkeeper for the same reason that he occupies the other stables.”

Browne v. Furtado (Court of Appeal, 1903).

Enclosed within certain school grounds are premises consisting of houses occupied by the headmaster, assistant masters, and boys, and school offices, class-rooms, etc. There is a wall separating the two sets of buildings and a door therein, through which there is internal

PREMISES INCLUDED IN THE ASSESSMENT— *contd.*

communication between the buildings. All the premises described are owned by the headmaster who carries on the school. It was held that they are occupied together by the owner for one purpose and must be assessed in one sum. *Vaughan Williams, L.J.*—"The subject matter of valuation is not merely what is structurally one house. In this case there cannot be any doubt about it that the occupation of the buildings is an occupation for the identical purposes for which the dwelling-house is occupied—for the purpose of this school."

In this connection see also *Governors of Bradford Grammar School v. Northwood*, under **Exemptions**, page 340.

Foster v. Athenaeum Newsroom and Library (Liverpool High Court of Justice, 1907).

The premises owned by the institution include a news-room and library, not used at night, and a house provided for the residence, rent free, of the head librarian. There is complete inter-communication throughout. The commissioners confined the assessment on the proprietors to the value of the dwelling-house. It was decided that the whole premises must be assessed together. *Bray, J.*—"Two questions arise. First, whether the proprietors were in occupation of the dwelling-house. The commissioners have impliedly, although they have not in so many words, found that the proprietors were in occupation of the dwelling-house, because they have said that the assessment is to stand as regards £35, and the assessment is on the proprietors. In my opinion there is nothing to show that the commissioners were wrong when they came to the conclusion, which after all is a question of fact. Now I have got to consider whether the surveyor is entitled to treat this as one taxable tenement or hereditament. Now it seems to me this; they are one hereditament; they are all included in four walls, and they have all inter-communication with one another."

PREMISES INCLUDED IN THE ASSESSMENT— *contd.*

Sir Daniel Cooper, Bart. v. Rose (High Court of Justice, 1907).

Premises owned by Sir D. Cooper include buildings used in connection with horse-breeding, and a dwelling-house occupied by his stud-groom. The groom formerly occupied the house rent-free, but an agreement was made whereby he paid rent and rates, and received a corresponding increase in his wages. It was held that the agreement really regulated the rights and obligations of Sir. D. Cooper and of his groom, and that the latter was therefore the occupier of the house.

Reith v. Governing Body of Westminster School (Court of Appeal, 1913).

This case was taken with reference to the house duty liability of certain premises in the occupation of the Westminster School, *i.e.*, premises A and C (a sanatorium and college admittedly an inhabited house for house duty purposes) and premises B and D (class-rooms, etc., in which no one resided). To pass from A and C to B and D it was necessary to cross Little Deans Yard. Premises A and C were occupied by King's scholars. Premises B and D were used by King's scholars and others. It was held (1) that neither premises A and C alone, nor premises A and C and B and D together could be deemed to be a charity school within the meaning of the House Tax Act, 1808, Schedule B, Exemption 4 (page 337); (2) that premises B and D were "offices belonging to and occupied with" A and C, within the meaning of the House Tax Act, 1808, Schedule B, Rule 2 (page 357), and that the assessment should therefore be made on the aggregate annual value of all the premises referred to.

(1) *Horridge, J.* (in the *High Court*).—"In order to arrive at whether or not the buildings A and C were a charity school, one must in my view look at the character of the Governing Body and decide whether the school-buildings *as a whole* were used for purposes which made them the buildings of a charity school or not. . . . The

PREMISES INCLUDED IN THE ASSESSMENT— *contd.*

income and expenditure of this school is set out, and from it it appears that the larger portion of the income is from sources other than endowment. The number of King's scholars entitled to preferential treatment was 60 out of 270. I cannot therefore hold . . . that the character of the school was in any sense that of a charity school."

(2) *Master of the Rolls*.—"I am unable to see that these buildings (B and D) which are plainly within the language of the Act so far as the King's scholars are concerned, are any less within it because other boys use the same buildings for the same purpose."

Shops and Warehouse attached.—All shops and warehouses which are attached to the dwelling-house, or have any communication therewith, shall be valued therewith (except certain warehouses—see under **Exemptions**, page 336). (*House Tax Act*, 1808. *Schedule B*, Rule 3.)

In re Union Bank of Scotland (Court of Exchequer, Scotland, 1878).

A building consists of bank premises and a house resided in by the bank's accountant, for the safety of the bank. It was held that the whole premises are chargeable under *House Tax Act*, 1808. *Schedule B*, 3. *Lord President*.—(On *House Tax Act*, 1808, *Schedule B*, Rule 3—"attached to," or "having communication therewith.") "Are we to read these words as disjunctive and hold that there will be liability for common assessment if the business premises and the dwelling are either attached to one another, or have communication with one another? I am of opinion that this is obviously the sound construction of the statute. This rule should apply wherever the business premises and the dwelling-house are attached to one another, although there may not be internal communication. Also they may be liable to be so assessed if they have a communication with one another, although they may not be immediately attached to one another."

PREMISES INCLUDED IN THE ASSESSMENT— *contd.*

Chambers.—Every chamber or apartment in any of the Inns of Court, or of Chancery, or in any college or hall in any of the universities of Great Britain, being severally in the tenure or occupation of any person or persons, shall be charged on the occupiers as an entire house. (*House Tax Act, 1808. Schedule B, Rule 4.*)

Halls.—Every hall or office whatever belonging to any person or persons, or to any body or bodies politic or corporate, or to any company, that are or may be lawfully charged with the payment of any other taxes or parish rates, shall be subject to the duty as inhabited houses. The owners shall be charged as occupiers. (*House Tax Act, 1808. Schedule B, Rule 5.*)

Free Church of Scotland v. Bain (Court of Exchequer, Scotland, 1897).

Buildings owned by the Free Church of Scotland consist of an assembly hall used for meetings, and of a divinity hall used as a training college for candidates for the ministry. It is held that the premises are chargeable as halls. *Lord President.*—"These buildings consist of 'halls' in the sense of that rule. The appellant's claim for exemption under ss. 2 of Section 13, Inland Revenue Act, 1878, is untenable for the reason that the exemption is conferred on premises occupied for the purpose of any trade or business."

Styles v. Treasurer of Middle Temple (Court of Appeal, 1899).

It was held that the Middle Temple Hall is chargeable under Rule 5, House Tax Act, 1808, but that the Library is not chargeable. Both the Hall and the Library are occupied in the daytime only. *Wills, J.*—(As to the distinction drawn between "inhabited dwelling-house" in the House Tax Act, 1851 and "inhabited house" in the House Tax Act, 1808.) . . . "Different language is used which appears to have identically the same meaning."

RATES OF DUTY—**FULL RATE.—**

Where the annual value is £20 but does not exceed £40, at 3d.
in the pound.
" " " exceeds £40 but does not exceed £60, at 6d.
in the pound.
" " " " £60, at 9d. in the pound.

LOWER RATE.

The following rates are allowed to premises described below.
Where the annual value is £20 but does not exceed £40, at 2d.
in the pound.
" " " exceeds £40 but does not exceed £60, at 4d.
in the pound.
" " " " £60, at 6d. in the pound.
(*Customs and Inland Revenue Act, 1890, s. 25 (1) and (2).*)

Shops.—Allowed to any such dwelling-house which shall be occupied by any person in trade, who shall expose to sale and sell any goods, wares or merchandise in any shop or warehouse, being part of the same dwelling-house, and in the front and on the ground or basement story thereof. (*House Tax Act, 1851. Schedule.*)

Licensed Premises.—Allowed where any such dwelling-house shall be occupied by any person licensed by the law to sell therein, by retail, beer, ale, wine or other liquors (although the room or rooms thereof in which any such liquors shall be exposed to sale, sold, drunk, or consumed shall not be such shop or warehouse as aforesaid). (*House Tax Act, 1851. Schedule.*)

Licensed Premises.

McDougall v. Campbell (Court of Exchequer, Scotland, 1899).

A building is let in two portions and the landlord is therefore charged as the occupier. One portion is used for the sale of beer, etc. The lower rate of duty was refused in respect thereof as the licensee is not charged as occupier.

RATES OF DUTY—*contd.*

Farmhouse.—Allowed where any dwelling-house shall be a farmhouse occupied by a tenant or farm servant and bona fide used for the purpose of husbandry only. (*House Tax Act, 1851. Schedule.*)

Hotel, Inn, Coffee-house.—Allowed to every dwelling-house occupied by any person who shall carry on in the said dwelling-house the business of an hotel-keeper, or an innkeeper, or a coffee-house keeper (although not licensed to sell therein by retail beer, ale, wine, etc.). (*House Tax Act, 1871, s. 31.*)

In re Strathearn Hydropathic Establishment Co., Ltd.
(*Court of Exchequer, Scotland, 1881.*)

The establishment receives patients requiring treatment, and also ordinary visitors. Rules are fixed which are binding on all residents alike. It was held that the premises are used as an hotel. *Lord President.*—"They are carrying on the business of a hydropathic establishment, which may be represented as having for its primary use the cure of disease, but that is not inconsistent with carrying on in the same building, and with reference to the very same people who come there to have their diseases cured, the business of a hotel-keeper."

Furnished Lodgings.—Where any dwelling-house is occupied in any year by a person for the main purpose of letting furnished lodgings therein as a means of livelihood, such person may, before (October 1st)¹, register his name in a list kept by the clerk to the commissioners, and before (November 1st)¹ make application to the commissioners for the reduction of the rate, which application, on due proof, shall be allowed. (*Customs and Inland Revenue Act, 1890, s. 26 (1).*)

RULES OF ASSESSING—

General.—Premises shall be brought into charge by the assessors, and, in their default, by the surveyors and inspectors. If any assessor omits in the assessment to charge the occupier of any house chargeable, he shall, for each and every neglect, forfeit and pay any sum not exceeding £20 and not less than £5. (*House Tax Act, 1803, s. 10.*)

¹ The above dates are fixed by Finance Act, 1901. s. 13.

RULES OF ASSESSING—*contd.*

Assessors, inspectors and surveyors shall have full power at seasonable times (taking the assistance of the constable or parish officer where necessary) to view each dwelling-house, to ascertain the annual rent at which such dwelling-house ought to be charged. To do this they may pass through any house, yard or premises. (*House Tax Act*, 1803, s. 60.)

The assessors shall bring in certificates of assessment, in writing under their hands, of every dwelling-house, whether inhabited or not, and of the full and just yearly rent which it is really worth, with the names and surnames of the several occupiers or inhabitants of each dwelling-house, and of the moneys they ought to pay in each case, and of the names of claimants to exemption with particulars of their claims. (*House Tax Act*, 1803, s. 62.)

No dwelling-house or other such premises shall be estimated or rated at any less annual value than that at which it stands in the last poor rate. (*House Tax Act*, 1808. *Schedule B*, Rule 7.)

In cases where there is no separate poor rate, or other rules for assessing are not applicable, the annual value shall be based on the best information obtainable of the rent at which the premises are let, or worth to be let, by the year. (*House Tax Act*, 1808. *Schedule B*, Rule 11.)

Where the assessors' assessment is excessive the commissioners may reduce it, but not below the annual value in the poor rate. (*House Tax Act*, 1808. *Schedule B*, Rule 12.)

Where the premises are assessed at a sum less than the actual rent at which they are let, or worth to be let, the commissioners may increase the assessment to the amount of such rent. (*House Tax Act*, 1808. *Schedule B*, Rule 13.)

Walker & Son v. Brisley (*High Court of Justice*, 1900).

It was held that, in fixing the annual value for purposes of assessment to house duty, the commissioners are not bound by that shown in the poor rate. *Grantham, J.*—"The assessors are driven to Rule 11. They are to receive independent evidence to enable them to get at the full value in the ordinary sense of the term." *Phillimore, J.*—"In the House Tax Acts value means rent according to Rule 11. It is the duty of the assessors to

RULES OF ASSESSING—*contd.*

make their assessment from the best information they can obtain of the actual value thereof."

Grinter v. Fleming (High Court of Justice, 1900).

Where brewers hold the lease of a house at a certain rent and let it as a tied house at a smaller rent, it was held that the commissioners are not bound by the poor rate valuation nor by the rent, but should receive evidence of the true annual value. *Grantham, J.*—"They ought to take evidence and ascertain for themselves what that rent is which the premises are worth to be let by the year as a free house." *Phillimore, J.*—"The enquiry ought to be, not what the house is worth to be let by the year, because it actually let, but what is the rent."

On whom charged.—Duty shall be charged annually on the occupier or occupiers for the time being, and shall be levied on him, her or them; or his, her, or their respective executors or administrators. (*House Tax Act, 1808. Schedule B. Rule I.*)

Where there is a change of occupation after the assessment is made, the duties shall be paid by the occupier or occupiers, landlord or landlords, for the time being, or by both or all of them, according to their times of possession, without any new assessment. (*House Tax Act, 1808. Schedule A, Rule 5.*)

(The rule last stated (referring to Window Tax) is made applicable to House Duty by *House Tax Act, 1808. Schedule B, Rule 1.*)

Where any dwelling-house shall be divided into different tenements being distinct properties, every such tenement shall be subject to the same duties as if the same was an entire house, which duty shall be paid by the occupiers thereof respectively. (*House Tax Act, 1808. Schedule B, Rule 14.*)

Where any house shall be let in different stories, tenements, lodgings or landings, and shall be inhabited by two or more persons or families, the same shall be charged as if such house or tenements were inhabited by one person and family only, and the landlord shall be deemed the occupier and shall be charged. (*House Tax Act, 1808. Schedule B, Rule 6.*)

RULES OF ASSESSING—contd.

In re Brebner (In the Exchequer, Scotland, 1874).

In re Walker (In the Exchequer, Scotland, 1874).

It was held that where a house is let in separate portions, each of an annual value less than £20, one assessment should be made on the landlord on the total annual value of the house.

In re Campbell (Court of Exchequer, Scotland, 1880).

A building is used by a club, except for rooms on the ground floor which are let in connection with an hotel adjoining. It was held that the landlord should be charged as occupier of the whole building. *Lord President.*—"There is a clear distinction in both these rules (Rules 6 and 14) between the word house or dwelling-house, and the word tenement. The former is the larger and more comprehensive term and signifies the entire building which is divided into different tenements occupied by different persons. A tenement is a portion of the dwelling-house separately occupied. . . .

"In the present case the entire building is the property of one owner, and is let in separate parts to two distinct tenants." *Lord Shand.*—"At the end of the rule (Rule 6) the word 'tenement' is used as meaning the same thing as house. But it is a house or tenement let in 'different stories, tenements, lodgings, or landings' and that is just the case of a large building let off in different flats."

Murdoch v. Lethem (Court of Exchequer, Scotland, 1904).

A doorway is made in the wall dividing two houses belonging to different owners. The combined premises are used by two families and one servant is kept for the whole. It was held that one assessment should be made on the two premises which form one house for house duty purposes. *Lord President.*—"Although the two houses were originally separate and independent structures, they have ceased to be so by the opening of the doorway, which always remains a free and open channel

RULES OF ASSESSING—*contd.*

of communication between them, and by both houses being occupied in common by the appellants and their families, just as if they were one family."

Unoccupied Houses.—Unoccupied houses shall be inserted in the assessment, with their annual rents. The assessors or (in default) the surveyor shall certify them to the commissioners when occupied. The incoming occupier shall give notice to the assessor or the surveyor within twenty days of occupation. (Penalty for neglect—£5 and liable to be charged for the whole year.) On notice being given the house shall be charged from the end of the previous quarter. If a house becomes unoccupied it shall be charged for the whole year where no notice is given by the previous or present occupier. The commissioners may discharge the assessment as seems just. (*House Tax Act, 1803, s. 15.*)

Where the tenant leaving the house after the assessment is made shall give notice to the assessor, and the house is unoccupied for the remainder of the year, the duty shall be discharged for such period. (*House Tax Act, 1808. Schedule A, Rule 5.*)

(The rule last stated (referring to Window Tax) is made applicable to House Duty by *House Tax Act, 1808. Schedule B, Rule 1.*)

Where the occupier or tenant leaves the house after the assessment is made, and gives notice to the assessor, the commissioners shall discharge the assessment for the quarters during which it was entirely unoccupied, although the quitting shall not be at the end of a lease. A house being completed for occupation and occupied after the yearly assessments are made shall be charged from the end of the quarter preceding occupation.

The assessment shall be made for the whole year where notice is not given, or where the house is occupied in the first quarter. (*House Tax Act, 1825, s. 2.*)

Separate Dwellings.—Where a house, so far as it is used as a dwelling-house, is used for the sole purpose of providing separate dwellings—

- (a) The annual value of any dwelling in the house which is of an annual value below £20 shall be excluded from the annual value of the house for purposes of house duty.

RULES OF ASSESSING—*contd.*

- (b) The rate of inhabited house duty in respect of any dwelling in the house of an annual value of £20 but not exceeding £40, shall be reduced to 3d.
- (c) The rate in respect of any dwelling in the house of an annual value exceeding £40 but not exceeding £60, shall be reduced to 6d. (*Revenue Act, 1903, s. 11 (1).*)

The provisions as to (a) and (b) shall not take effect unless a certificate as to accommodation is produced to the general commissioners, as below. (s. 11 (2).)

The certificate of the Medical Officer of Health for the district shall be required, that the house is so constructed as to afford suitable accommodation for each of the families or persons inhabiting it, and that due provision is made for their sanitary requirements. The Medical Officer of a district, on the request of the person assessed, shall examine the house and give the certificate if the accommodation is satisfactory. The authority may appoint another medical practitioner to give such certificates. (*Customs and Inland Revenue Act, 1890, s. 26 (2).*)

Seaman v. Lee (High Court of Justice, 1899).

A house is built to provide separate dwellings, and each of the three floors is let separately. The doors of all the rooms open on to the landings. It was held that the Customs and Inland Revenue Act, 1890, s. 26 (2), does not require the structural division of the dwellings. *Grantham, J.*—"According to the Attorney-General you must each of you be able to shut yourselves off by one door upon the common staircase. I see nothing in the Act to show that that is necessary."

London County Council v. Owen Cook (High Court of Justice, 1905).

It was held that cubicles in buildings provided for working men by the London County Council are not separate dwellings. The whole building should be charged in one sum. *Walton, J.*—"It seems to me that these cubicles were merely sleeping places, not places in which anybody dwelt, and that therefore they were not separate

RULES OF ASSESSING—*contd.*

dwellings within the meaning of Section 26 (2) Customs and Inland Revenue Act, 1890."

See also *Hillman v. Ankerson* (1906), page 351.

YEAR OF ASSESSMENT—

Every assessment shall be made for the year commencing and ending on the days specified below.

- (a) In England from the sixth day of April to the following fifth day of April inclusive.
- (b) In Scotland from the twenty-fourth day of May to the following twenty-third day of May inclusive. (*Taxes Management Act*, 1880, s. 48.)

APPENDIX I

THE SCHEDULES AND THEIR SCOPE

INCOME tax may be charged and levied in any year only on the ultimate authority of the Finance Act for that year, and by reference to the clause thereof enacting that the tax shall be charged at a rate named. But the annual Finance Acts invariably contain provisions re-enacting for one year all the provisions which were in force on the last day of the preceding financial year. As income tax has been imposed annually without a break since 1842, it follows that the existing law is determined by the Income Tax Act of 1842, together with all subsequent additions and less such provisions of 1842 and later years as have been repealed.

The Income Tax Act, 1842, divided taxable income into five classes, but the descriptions which determined the extent and limits of each class were revised somewhat in 1853. The real basis of income tax legislation is therefore contained in the Income Tax Act, 1853, and in Section 2 thereof. Here also all that it was intended to tax was divided into five classes according to source, such classes falling into Schedules headed A, B, C, D, and E. These schedules are further described and divided by certain rules appearing in the Income Tax Act of 1842; thus, Schedule A has three main sub-classes and Schedule D has six. All that falls within the Schedules as so described is taxable. Conversely, nothing that falls without the schedules as so described may be the subject of an assessment.

The plan followed in the succeeding notes is as follows. Firstly, there will be set out a statement of taxable subjects arranged according to the schedules and their sub-classes. Secondly, there will be found an analysis of such taxable subjects on broad lines. Thirdly, there will appear a more detailed analysis of taxable subjects strictly according to character.

(1) The following is a statement of taxable subjects set out according to the schedules and their sub-divisions. The page references indicate the places, later in the book, where the rules relating to each sub-class may be found.

I. STATEMENT ACCORDING TO SCHEDULES.

Schedule A.—*Income arising from the ownership of lands and tenements in the United Kingdom.*

No. I. General Rule. Lands, buildings, etc., capable of actual occupation. (Page 157.)

No. II. Special subjects. Tithes taken in kind, ecclesiastical dues, manors, fines, etc.; other profits from lands not before enumerated. (Page 163.)

No. III. Special subjects. Quarries, mines, and ironworks, gas-works, water-works, railways, etc. (Pages 165 and 167.)

Nos. IV, V, and VI. Rules relating to the above; particular allowances, exemptions. (Pages 178 to 183.)

Schedule B.—*Income arising from the occupation of lands in the United Kingdom.*

No. VII. Basis and subjects of charge. (Page 191.)

No. VIII. Nurseries and market gardens. (Page 193.)

Schedules A and B.

No. IX. Rules as to persons chargeable. (Page 194.)

No. X. Rules as to annual values in particular cases. (Page 195.)

No. XI. Rules as to Poor Rate Assessments. (Page 195.)

Schedule C.—*Interest annuities, dividends, etc., paid out of public revenue.*

(Page 200.)

Schedule D.—*Profits of trade, etc., interest, and profits not within the remaining Schedules.*

Case I. Trades, manufactures, and concerns in the nature of trade, not contained in any other schedule; with rules 1, 2, 3, and 4, as to the computation of the duty, the extent of the Case, and inadmissible deductions from profits. (Pages 256 to 270.)

Case II. Professions, employments, and vocations, not in any other Schedule; with Rules 1 and 2 as to the extent of the Case and the computation of the duty. (Page 270.)

—*contd.*

1. STATEMENT ACCORDING TO SCHEDULES—*contd.*

Also, Cases I and II. Rules 1, 2, 3, and 4, as to inadmissible deductions, the exclusion of the profits of lands, partnerships and changes in proprietorship. (*Pages 270 to 291.*)

Case III. Profits of an uncertain value not charged under Schedule A ; with Rules 1, 2, and 3, as to computation, the assessment of interest, and dealers in cattle and sellers of milk. (*Page 291.*)

Case IV. Interest from foreign and colonial securities. (*Page 292.*)

Case V. Income from foreign and colonial possessions. (*Page 292.*)

Case VI. Annual profits or gains not falling under any other Case or Schedule. (*Page 304.*)

Schedule E.—*Employments under the Crown, companies, societies, public institutions, etc.*

Rules 1 to 10 as to persons and profits charged, place of charge, offices charged, collection, etc. (*Pages 306 to 320.*)

The analysis which follows reveals certain great points of controversy. It divides taxable subjects into four classes.

2. ANALYSIS ACCORDING TO PLACE.

(i) Income arising in the United Kingdom and belonging to persons resident in the United Kingdom.

From lands—Schedules A and B.

„ *public revenue*—Schedule C.

„ *public offices, etc.*—Schedule E.

„ *trades, professions, etc.*—Schedule D, Cases I and II.

Profits of an uncertain annual value } „ „ Case III.

Other annual profits and gains „ „ Case VI.

(ii) Income arising in the United Kingdom and belonging to persons not resident in the United Kingdom.

Subdivided as (i) above.

—*contd.*

2. ANALYSIS ACCORDING TO PLACE—*contd.*

(iii) Income arising out of the United Kingdom, but received in the United Kingdom.

From foreign and colonial public revenue—Schedule C.

„ *foreign and colonial securities* —Schedule D, Case IV.

„ *foreign and colonial possessions* — „ „ Case V.

(iv) Income arising out of the United Kingdom from securities, stocks, shares or rents, whether received in this country or not.

From foreign and colonial securities —Schedule D, Case IV.

„ *foreign and colonial possessions* — „ „ Case V.

The subjects of controversy referred to in the preceding analysis are the following—

- (a) *In what circumstances is income regarded as arising in the United Kingdom?*
- (b) *In what circumstances is a person regarded as residing in the United Kingdom?*
- (c) *In what circumstances is foreign and colonial income deemed to be received in the United Kingdom?*

Questions under (a) concern

- evident cases, such as profits from lands, businesses carried on and confined to this country, etc. ;
- businesses, the whole or part of the transactions of which occur abroad, but which are in some way directed from this country ;

See under *Persons owning Foreign Businesses, etc.*, pages 221 to 228, from which it will appear that if the business is managed from this country, it is deemed to be carried on here.

- businesses, the whole or part of the transactions of which occur in this country, but which are owned or directed by persons resident abroad ;

See under *Agents in the United Kingdom, etc.*, pages 229 to 237.

Questions arising under (b) concern

- evident cases, such as those in which the person concerned habitually resides in this country ;
- cases of individuals who ordinarily reside in this country, but

go abroad occasionally, or whose business keeps them on the high seas, etc. ;

See Section 39 of the Income Tax Act, 1842, page 206, and under *What is Residence ?* pages 207 to 212.

- cases of individuals who do not ordinarily reside in this country, but who visit here :

See Section 39 of the Income Tax Act, 1842, page 206, and under *What is Residence ?* pages 207 to 212.

- cases of companies ;

A company is held to reside where its main seat of management is situated. See pages 212 to 221.

Questions arising under (c) are dealt with on pages 294 and 304.

Taxable subjects will now be analysed in* detail according to their exact character.

3. ANALYSIS ACCORDING TO SOURCE.

Income arising from—

Lands—Schedules A and B.

Public Revenue—Schedule C.

Public Employments, etc.—Schedule E.

Foreign and Colonial Possessions and Securities } —Schedule D, Cases IV and V.

It may be pointed out that the above classifications are clear in themselves, and give little occasion for difficulty. But it is inevitable that there should be subjects of so doubtful a character that they fall on the border-line of liability. With these some difficulty must be expected. They are reserved for Cases I, II, III and VI of Schedule D, which are intended to catch all liable subjects not included above. Continuing, therefore, the analysis :

Trades, manufactures and concerns in the nature of trade not contained in any other Schedule. } —Schedule D, Case I.

Professions, employments and vocations not contained in any other Schedule. } —Schedule D, Case II.

Profits of an uncertain annual value not charged under Schedule A. } —Schedule D, Case III

Annual profits and gains not falling under any other Case or Schedule. } —Schedule D, Case VI.

It will be observed that the scope of Case II of Schedule D, as stated in the preceding analysis, is fairly evident. Dicta thereon will be found on page 238. But there may be considerable doubt concerning the liability of a particular subject under Cases I, III or VI. The principles upon which the liability of such doubtful cases must be decided are revealed in the following questions.

- (a) *Does the subject arise from the carrying on of a trade?* If so, Case I applies.
- (b) *Is it a profit of an uncertain annual value not charged under Schedule A?* If so, Case III applies.
- (c) *Is it an annual profit or gain not included in any other Case or Schedule?* If so, Case VI applies.

Questions have arisen under (a) concerning—

- a rate on coal imported, betting profits, the realisation of investments, the sale of lands and estates ;

See under *What is profit?* pages 237 to 253.

- the profits of an insurance company from premiums paid by participating policy holders ;

See under *Insurance Companies*, pages 248, 251, 252.

- the surplus arising to municipal bodies from water-works, gas-works, etc. ;

See pages 168 to 172 : the main principle laid down is that trading requires two distinct parties.

Questions under (b) and (c) are not often the subject of dispute. Case III includes income from the well-defined sources mentioned on pages 291 and 292. Dicta regarding the word *annual* will be found on pages 94 to 98. In this connection also the wording of Section 102 of the Income Tax Act, 1842 (page 83), should be observed, indicating as it does, that an annual payment may be made by instalments of less or more than a year.

APPENDIX II

GUIDE TO INCOME TAX LAW.

THE following guide is *not offered in substitution for the general index*, but is intended to point the reader to enactments and decisions which bear upon the particular class of matters he has in hand. The general history of the taxpayer's affairs and circumstances incidental thereto are dealt with under four headings, *viz.*—

- (1) *The taxpayer in general ;*
- (2) *The taxpayer as the proprietor of a business ;*
- (3) *The taxpayer as owner of property ;*
- (4) *Companies.*

Attention may be directed, however, to the threefold analysis of taxable income on page 372, etc.

The Taxpayer in General.

Income from property assessed under Schedule A ; basis, annual value—see page 157.

Income from occupation of lands assessed under Schedule B ; basis, one-third of annual value—see page 190.

Income by way of dividends, etc., taxed before receipt taken as the gross amount from which tax has been deducted—see page 279.

Income by way of untaxed interest ; basis, the amount accruing within the preceding year—see page 83.

Income from abroad ; basis varies—see pages 293 and 294.

Income from an office under a company ; the amount accruing within the current year—see pages 306 and 22.

Income from other employments ; assessed on average earnings—see page 270.

Income from profession, business, etc. ; see the next heading.

Tax paid on aggregate income less allowances for exemption—see page 2 ;

abatement—see page 4 ;

life insurance premiums—see page 118 ;

allowance for children—see page 43.

The Taxpayer in General.—contd.

Rates of tax—see pages 13 and 14.

Super-tax liability—see page 326.

Husband and wife—see page 78.

The Taxpayer as the Proprietor of a Business.**The History of a Business.**

A new business set up ; normal average—see page 256.

“ “ “ “ *adjustment allowed in early years*—
see page 30.

A business acquired as a going concern ; basis of assessment—
see page 287.

Businesses amalgamated or business absorbed—see page 290.

Changes in partnership ; usually no alteration in average—see
pages 288 to 290.

*Specific cause of decreased profits after change in proprietorship
or partnership*—see page 31.

Loss incurred—see page 30.

Business discontinuing ; adjustment of profits in closing years—
see page 32.

Death of proprietor—see pages 31 and 8.

Bankruptcy of proprietor—see page 31.

Business taken over by creditors—see page 254.

Relations with Other Concerns.

Loss in another business owned by the same proprietor—see pages
269, 282, and 283.

Loss of loans made to another concern—see pages 261 and 274.

Financing another concern—see pages 269 and 280.

Trade combines and similar associations—see page 280.

Trade Associations—see pages 279 to 282.

Controlling foreign concerns—see page 221.

Paying interest, patent royalties, etc. (right to deduct tax)—see
pages 83 and 124.

Relations between Partners.

Firm assessed in one sum—see page 286.

Apportionment of profit for tax purposes—see page 5.

*Partners' salaries, interest on capital and drawings all regarded
as parts of assessable profits*—see page 257.

The Taxpayer as the Proprietor of a Business— *contd.*

Relations with Revenue Authorities.

Returns required—see pages 146, 147, 150, and 151.

Notice of assessment received—see page 25.

Right of appeal to local commissioners—see page 22.

Right of appeal to special commissioners—see page 324.

Right of appeal to High Court, Appeal Court, and House of Lords—see page 76.

Payment of duty—see page 46.

Powers of distraint, etc.—see page 48.

Trade Premises, Fixtures, etc.

Premium for lease not set against profits—see page 271.

Rent set against profits—see page 269.

Annual value of premises owned set against profits—see page 270.

No deduction for capital matters—see page 257.

Depreciation of plant and machinery—see page 63.

Repairs and renewals of utensils—see page 266.

Expense of removal—see page 267.

Employee residing on premises—see page 272.

Proprietor residing on premises—see page 269.

Expenditure Allowed as Deductions for Income Tax Purposes.

See under *Deductions* in General Index.

Foreign Matters.

See page 374, etc.

The Taxpayer as the Owner of Property.

Fixing the annual value—see page 157.

As to the exclusion of moveable subjects—see page 158.

As to the inclusion of fixtures—see page 158.

The deduction of tax from rent—see page 179.

„ „ „ „ *ground rent*—see page 179.

„ „ „ „ *interest*—see page 180.

Deductions for repairs, management, etc.—see pages 189 and 190.

Empty property—see page 196.

Floods, tempests, etc., causing loss—see page 198.

The Taxpayer as the Owner of Property—*contd.*

Flats, tenements, etc.—see pages 180 and 181.

On whom the assessment may be made—see pages 178, 180, 181, and 194.

Profit on sale of property—see page 240.

Companies.

Expenses of obtaining capital—see page 266.

Loss and exhaustion of capital—see page 257.

Clubs, Mutual Associations, Charitable concerns—see pages 245, 43, 248-251, and 40.

Companies controlling foreign concerns—see page 222.

Realisation of assets—see pages 238 to 244.

Insurance companies—see pages 246 to 253.

Financial companies—see page 83.

See also under *The Trader as Proprietor of a Business.*

APPENDIX III

LAND TAX—

LAND Tax is payable on or before January 1st in each year. (*Taxes Management Act*, 1880, s. 82 (1).)

Quota (or sum in charge against the parish) shall be certified by the commissioners or their clerk on the warrant or instructions delivered to the assessors. (*Taxes Management Act*, 1880, s. 114 (1).)

Such certificate shall distinguish the portion exonerated from the amount to be raised by the assessment for the particular year, and also the name of the parish. (s. 114 (2).)

Surplus.—If the sum charged by assessment for any parish exceeds the “quota to be raised,” the clerk shall (under penalty of £20) insert at the foot of the duplicate a correct summary according to the prescribed form. (s. 114 (3).)

Like powers shall apply to the collection of the surplus as of the quota. (s. 114 (4).)

It shall be accounted for and paid over under penalty (see *Penalties*, page 82). (s. 114 (5) and (6).)

It shall be paid into the Bank of England to an account opened with the commissioners for the Reduction of the National Debt. (s. 114 (7).)

The Board shall keep an account with every parish showing the sums paid over as surplus. (s. 114 (8).)

The surplus shall be applied to the redemption of land tax (when sufficient to redeem £3 or more). (s. 114 (9).)

The land tax commissioners may (subject to the Board’s approval) certify for the payment from the excess of “reasonable remuneration” to the collector before the surplus is paid over. (s. 114 (10).)

Any surplus exceeding £5 shall be certified by the commissioners to the Board on or before December 24th in each year. (s. 114 (13).)

Year.—Every assessment shall be made for the year from the

LAND TAX—*contd.*

twenty-fifth day of March to the following twenty-fourth day of March inclusive. (s. 48.)

Exemption and abatement.—When the owner in possession of the rents and profits of any land or other property assessed, before the amount so assessed in any financial year is paid, produces to the collector of land tax a certificate from the surveyor of taxes that such owner has been allowed in that year—

- (1) a total exemption from income tax by reason of his income not exceeding £160—the said amount of land tax shall not be collected ;
- (2) an abatement of income tax by reason of his total income not exceeding £400—one-half of the said amount of land tax shall not be collected ;

and any amount of land tax not collected by reason of this section shall be remitted from the unredeemed quota for that year. (*Finance Act*, 1898, s. 12.)

A Schedule of arrears which cannot be recovered shall be required from every collector clearing his account for any year. (*Taxes Management Act*, 1880, s. 114 (11).)

Oath shall be required]

- (a) that each sum included is due and unpaid,
- (b) that the defaulter had no goods, etc., for distraint within the parish since the amount became payable,
- (c) that there were not and are not sufficient goods, etc., on the premises charged, for distraint. (s. 114 (12).)

Forms.—See page 74.

Maximum Rate.—The amount charged on any parish shall not exceed the amount produced by a shilling rate on the annual value of all the land in the parish subject to Land Tax. Any excess shall be remitted for the year in question. (*Finance Act*, 1896, s. 31 (1).)

Minimum Rate.—No assessment shall be made at a rate less than one penny in the pound on the land subject to land tax, unless a smaller rate would redeem all the unredeemed quota of the parish. (s. 32 (2).)

Redemption by surplus.—Any surplus not applied in payment to the assessors shall be deemed to have redeemed so much of the unredeemed quota of the land tax as is equal to one thirtieth part of such surplus. (*Finance Act*, 1896, s. 32 (3).)

LAND TAX—*contd.*

Redemption by owner.—The owner of any land shall be allowed to redeem it from land tax by payment of a capital sum equal to thirty times the sum assessed by the last assessment, either by a single payment or by annual instalments agreed upon with the Board, and interest at three per cent. per annum on the unpaid capital sum shall be payable with each instalment. (s. 32 (1).)

Where an owner redeems land tax by payment of a capital sum, the Board shall, on application at the date of redemption, grant to him a certificate charging the land with the amount of that sum, and with interest equal to the amount of the land tax redeemed, and he shall be entitled to the charge as if it were a mortgage secured to him by a mortgage deed; any such charge, when the certificate is registered in pursuance of the Land Charges Act, 1888, shall have priority over other charges. (*Finance Act, 1896, s. 33.*)

Definitions.—Under this Act "*Annual Value*" means the annual value by determination of the General Commissioners under Schedule A; or, if not so determined, means the annual value as determined by the commissioners for the purposes of this Act, on the like basis.

"*Unredeemed quota of Land Tax*" means the part of the Land Tax charged against a Land Tax parish under the Land Tax Acts, which for the time being remains payable. (*Finance Act, 1896, s. 35.*)

APPENDIX IV

WAR LEGISLATION AS AFFECTING INCOME TAX AND SUPER-TAX—

THE FOLLOWING SECTIONS PASSED INTO LAW ON
27th NOVEMBER, 1914.

IN order, as far as may be, to provide for the collection of income tax (including super-tax) for the last four months of the current income tax year at double the rates at which it is charged under the Finance Act, 1914, the following provisions shall have effect—

- (a) The amount payable in respect of any assessment already made of income tax chargeable otherwise than by way of deduction, or of super-tax, shall be treated as increased by one-third, and any authority to collect the tax, and remedy for non-payment of the tax, shall apply accordingly ; and
- (b) An assessment of any such income tax or super-tax not already made shall be made for an amount one-third more than that for which it would have been made if this Act had not passed ; and
- (c) Such deductions shall be made in accordance with regulations prescribed by the Commissioners of Inland Revenue (*set out on page 384E*) in the case of dividends, interest, or other annual sums (including rent) due or payable after the 5th day of December, 1914, as will make the total amount deducted in respect of income tax for the year equal to that which would have been deducted if income tax for the year had been at the rate of one shilling and eightpence ; and
- (d) Subsection (1) of section 14 of the Revenue Act, 1911 (*see page 111*), shall apply, in cases where both the half-yearly payments referred to therein have been paid before the passing of this Act, as if this Act were the Act imposing

WAR LEGISLATION AS AFFECTING INCOME TAX AND SUPER-TAX—(contd.)

income tax for the year, and as if one shilling and eightpence were the rate ultimately charged for the year ; and

- (e) Where the amount of any exemption, relief, or abatement under the Income Tax Acts is to be determined by reference to the amount of income tax on any sum, the amount of the tax shall be calculated at one shilling and eightpence, with a proportionate reduction where relief is granted under section 6 of the Finance Act, 1914 (*see page 14*) ; and where income tax is payable in respect of a part only of a year, the tax shall be deemed to be at the rate of one shilling and eightpence. (*Finance Act, 1914 (Session 2), s. 12 (1) .*)

For the purpose of the Provisional Collection of Taxes Act, 1913 (*see page 11*), or of continuing income tax for any future income tax year, the rate of income tax for the current year shall be deemed to be two shillings and sixpence. (*S. 12 (2) .*)

Section 133 of the Income Tax Act, 1842, and section 6 of the Revenue Act, 1865 (which provide for the reduction of assessments or the repayment of duty in certain cases where the profits of the year of assessment fall short of the sum on which the assessment has been made), shall, notwithstanding their repeal by section 24 of the Finance Act, 1907, have effect as respects any assessment to income tax for the current income tax year where it is proved to the satisfaction of the Commissioners by whom the assessment has been made, that the diminution of profits and gains on account of which relief is claimed under those sections is due to circumstances attributable directly or indirectly to the present war, whether those circumstances are a specific cause of the diminution of income within the meaning of section 134 of the Income Tax Act, 1842, or not (*see pages 31 and 32*) ; and diminution of profits and gains on account of which relief can be given under this section shall not be deemed to be a specific cause authorising the grant of relief under the said section 134.

The foregoing provision, in its application to the case of any person who, in connection with the present war, is or has been

WAR LEGISLATION AS AFFECTING INCOME TAX AND SUPER-TAX—(contd.)

serving as a member of any of the military or naval forces of the Crown, or in any work abroad of the British Red Cross Society, or the Saint John Ambulance Association, or any other body with similar objects, shall be construed as if that provision referred only to section 133 of the Income Tax Act, 1842, and contained no reference to section 6 of the Revenue Act, 1865. (*Finance Act, 1914 (Session 2) s. 13 (1).*)

(*The Income Tax Act, 1842, s. 133, and the Revenue Act, 1865, s. 6, are set out below.*)

Where it is proved to the satisfaction of the Commissioners for the special purposes of the Acts relating to income tax that the actual income from all sources of any individual charged to super-tax for the current income tax year is or will be less than two-thirds of the income on which he is liable to be so charged, he shall be entitled to postpone the payment of so much of the super-tax payable by him as represents the difference between the tax payable on the income on which he is liable to be assessed and the tax which would have been payable by him if he had been assessed on his actual income; and any amount of which the payment is so postponed shall, subject to any provisions which may be made by Parliament, become payable on the 1st day of January, 1916. (*S. 13 (2).*)

Section 59 of the Taxes Management Act, 1880 (which relates to the statement of a case on a point of law), shall apply to cases in which relief is claimed under this section. (*See page 76.*) (*S. 13 (3).*)

The enactments referred to above read as follows—

If (within or at the end of the year current at the time of making any assessment or at the end of any year when such assessment ought to have been made) any person charged to the duties contained in Schedule D

—whether he shall have computed his profits or gains arising as last foresaid on the amount thereof in the preceding or current year, or on an average of years—

WAR LEGISLATION AS AFFECTING INCOME TAX AND SUPER-TAX—(contd.)

shall find, and shall prove to the satisfaction of the Commissioners by whom the assessment was made, that his profits and gains during such year for which the computation was made fell short of the sum so computed in respect of the same source of profit on which the computation was made,

it shall be lawful for the said commissioners to cause the assessment made for such current year to be amended in respect of such source of profit, *as the case shall require*,

and in case the sum assessed shall have been paid, to certify under their hands to the commissioners for special purposes the amount of the sum overpaid, and thereupon the said last-mentioned commissioners shall issue an order for the repayment of such sum as shall have been so overpaid. (*Income Tax Act, 1842, s. 133.*)

Whereas by section 133 of the Act of 1842 provision is made for giving relief, by reduction of the assessment or repayment of duty, in certain cases where the profits of the year of assessment fall short of the sum on which the assessment has been made :

Be it enacted, that no such reduction or repayment shall be made in any such case unless the profits of the said year of assessment are proved to be less than the profits for one year on the average of the last three years, including the said year of assessment ;

nor shall such relief extend to any greater amount than the difference between the sum on which the assessment has been made and such average profits for one year as aforesaid. (*Revenue Act, 1865, s. 6.*)

Note.—" *As the case may require*," in section 133 was held to require adjustments to the actual profits of the year of assessment. This was amended by the Act of 1865 as shown above. But this amendment does not extend to the persons actively engaged in the present war and enumerated in section 13 (1) of the Finance Act (Session 2).

WAR LEGISLATION AS AFFECTING INCOME TAX AND SUPER-TAX—(contd.)

REGULATIONS prescribed by the Commissioners of Inland Revenue under Section 12 (1) (c) of the Finance Act, 1914, Session 2.

I. In cases where deduction of Income tax is required to be made otherwise than from payments made out of profits or gains brought into charge to such tax, duty shall be deducted from any payments made after the 5th day of December, 1914, as if income tax for the year had been at the rate of one shilling and eightpence, and, in addition, the following provisions shall apply—

- (1) In the case of payment equal in amount where one half-yearly payment or two or more quarterly or other periodical payments shall have been made before the 6th day of December, 1914, any additional sums for duty payable thereon by reason of the passing of the Act shall be deducted from the half-yearly or quarterly or other periodical payment or payments, thereafter to be made before the 6th day of April, 1915, provided that where more than one such payment is to be made, the deductions from every such payment shall be equal in amount.
- (2) In cases where periodical payments are unequal in amount, and any such payments shall have been made before the 6th day of December, 1914, any additional sums for duty payable thereon by reason of the passing of the Act shall be deducted from any other periodical payments thereafter to be made before the 6th day of April, 1915, provided that where more than one such payment is to be made the deductions from every such payment shall, where the total amount of the whole of such payments can be ascertained at the time when the first of those payments is made, be apportioned equally between the whole of those payments, but where the total amount of the whole of such payments cannot be ascertained at the time when the first of those payments is made, deduction shall be made from the first payment.

WAR LEGISLATION AS AFFECTING INCOME TAX AND SUPER-TAX—(*contd.*)

II. Where payments are made out of profits or gains brought into charge to Income Tax and under the Income Tax Acts that tax is deductible from any payment at the rate or rates in force during the period through which the same was accruing due, any deduction so made after the 5th day of December, 1914, may be made as if Income Tax for the year had been at the rate of one shilling and eightpence, and, in addition, may include any sum by which any previous deduction of Income Tax on account of payments accruing due since the 5th day of April, 1914, is less than the sum which would have been deductible if Income Tax for the year had been at the rate of one shilling and eightpence. Provided that if any such payments shall have been made prior to the 6th day of December, 1914, any additional sums for duty deductible in consequence of the passing of the Act shall be deducted from the next payment, or if there be two or more payments of equal amount to be made in respect of income accruing before the 6th day of April, 1915, then such additional sum shall be so deducted as to make the deductions in respect of each of those payments equal in amount.

By order of the Commissioners of Inland Revenue,

J. E. CHAPMAN,

Secretary.

28th November, 1914.

INDEX

- A, SCHEDULE, general provisions, 157
- , analysis, 372
- , continuance of assessments, 10
- , procedure in making assessments, 17, 18
- , additional assessments, 20
- , appeals, 22
- , No. I, 157
- , No. II, 163
- , scope of, 175-6
- , No. III, 165
- , assessed under rules of Schedule D, 177
- , No. IV, 178
- , No. V, 181
- , No. VI ("other profits") 183
- , repairs, 189
- A and B, Schedules, No. IX, 192
- , No. X, 195
- , No. XI, 195
- Abatement to small incomes, 1, 4
- limits, etc., 4
- claims by husband and wife, 79
- non-residents, 120
- , false, 133
- , rent-free residence, 308
- Abetting false claims, 137
- Abroad. *See under* FOREIGN
- Accountant-General of Inland Revenue, 38
- Accountants at appeals, 24
- Accounts, 5
- not binding for tax purposes, 175
- Act, exemption by private, 1
- Additional assessments, 20
- time limit, 20, 21
- Commissioners. *See under* COMMISSIONERS
- Adjustment at end of year, 30
- Advertisements, 272, 273
- Adventures, assessment of, 256
- Affidavits, 6
- Affirmation, 6
- Agents, claims by, 2
- , general provisions, 6
- under Schedule C, 204
- to foreign traders, 229
- receiving foreign income, 293
- Alms-houses exempted under Schedule A, 183, 185
- exempted to House Duty, 337
- Alteration of assessment prohibited, 24
- Alteration of assessment, penalty for, 127
- Alum springs or works, 167
- Amalgamation of business, 289
- Analysis of schedules, 372
- Annual interest, what constitutes, 94
- not a trade expense, 111
- , omission to deduct tax, 104
- Annual payment charged, 82
- , what constitutes an, 94
- , omission to deduct tax, 104
- Annual value of property, 157
- not to include movable subjects, 158
- to include fixtures, 158
- Annuities charged, 82
- , what the term includes, 92, 201
- from charitable funds, 244
- , company dealing in, 250
- , premium for deferred, 118
- from public revenue, 306
- Appeals, general provisions, 22
- , evidence at, 23, 27
- , refusal to hear evidence at, 23
- , attendance of surveyor, 24
- , procedure at, 26-29
- , oath at, 29
- to High Court, 76
- , procedure in Ireland, 115
- , penalties concerning, 135
- to special commissioners, 324
- Application for tax, 46
- of profits immaterial, 253
- Assessment books, 35
- Assessments, general provisions, 9
- , first, 15
- , additional, 20
- not to be altered, 24
- , adjustment at end of year, 30
- , surcharges by surveyor, 32
- , supplementary, 35
- , procedure in Ireland, 114
- by number or letter, 122
- , penalties for alteration of, 127
- by special commissioners, 324
- Assessors, general provisions, 36
- , appointment of, 15, 37
- , procedure in making assessments, 15-18
- , penalties on, 125
- , remuneration of, 144
- in Scotland, 322
- Assessors and House Duty, 366

- Assets, sale of, 238
- Assize Court, 61
- Associations may not claim exemption, 3
- Assuming character of an officer, 136
- Asylums, County Lunatic, 63
- and House Duty, 338
- Auctioneers to give notice of sales in Scotland, 138
- Average, Schedule D, 256
- B, SCHEDULE, general provisions, 191
- , No. VII, 192
- , No. VIII, 193
- , scope of, 192
- , continuance of assessments, 10
- , procedure in making assessments, 17, 18
- , additional assessments, 20
- , appeals, 22
- , earned income rate, 72
- , charged on one-third of annual value, 157
- , as to assessment under Schedule D, 193
- Bad debts, 257
- Bank of England in relation to Schedule C, 202
- Bankers, interest paid to, 94, 95, 113
- Bankruptcy proceedings, 29
- Barrister at appeals, 24
- Bequests free of tax, 107
- Betting profits, 238
- Board and officers, 38
- Bobbinet machines included in annual value, 160
- Boilers included in annual value, 158
- Bonds, foreign, received here, 300
- Books of assessment, 35
- , expense of clergymen's, 45
- Branch of foreign concern, 229, 302
- Break-open warrant, 48
- Brewers' cases, 273-78
- Bribery, penalty for, 129
- Bridges, 167
- British Museum, 39
- Brokers' charges, 267
- Building society interest, 87, 104
- Burgh Court, 61
- Business premises, allowance of rent, 269-72
- , employees residing on, 272
- and House Duty, 341-56
- Buying and not selling, 238
- C, SCHEDULE, general provisions, 200
- , annuities, 201
- Canals, 167
- Capital matters not chargeable against revenue, 257, 284
- assets in defective condition, 168
- , repayment of borrowed, 173
- , exhaustion of, 75, 257
- , as to purchase money, 265
- , cost of obtaining, 265
- Caretaker and House Duty liability, 342, 345, 356
- Cases for High Court, 76
- Casual profits (lands), 164
- Casualty on entering property, 182
- Cattle-dealers, 291
- Cemeteries, 174
- assessed under Schedule A, No. III, 175
- Certificate of payment of tax to include interest, 110, 305
- Cessation of business, 31, 32
- Chalk quarries, 165 [363
- Chambers and House Duty liability, 363
- Change in proprietorship, 31, 287
- , depreciation allowance, 69
- Channel Islands, residents in, 121
- Charge duplicates, 39
- Charges on income, 2, 72
- salaries, 310
- Charitable purpose, what constitutes a, 41
- Charities, exemptions to, 40, 183
- Charity school and House Duty liability, 337
- Children, relief in respect of, 43
- Church dues and money payments, 163
- Claims to abatement and exemption, 2
- by husband and wife, 79
- by non-residents, 120
- Clergymen, general provisions, 44
- , gifts, etc., to, 307-10
- Clerk to Commissioners, duties of, 19, 46
- , general provisions, 45
- , penalties on, 126
- , remuneration of, 144
- Clubs, golf, 245
- , working men's, and House Duty 335
- Coach-houses and House Duty, 27
- Coal mines, assessment of, 165
- Coffee-houses and House Duty, 29
- Collection, general provisions, 46
- before passage of Act, 11
- from husband and wife, 79
- in Ireland, 116
- in Scotland, 320

Collection of House Duty, 336
 Collector of Customs and Excise, 39
 Collectors to keep accounts, 5
 —, duplicate of assessment issued to, 36
 — to pay over sums collected, 50
 —, general provisions, 51
 —, penalties on, 127
 —, actions to be defended by Commissioners, 138
 —, bonds for, 139
 —, remuneration of, 145
 — to deliver schedule, 154, 155
 — in Scotland, 320
 —, surveyor to report misconduct, 332
 Collegiate bodies, 315
 Collusive agreement, penalties for, 129
 Colonial. *See under* FOREIGN
 Colportage not a trade, 254
 Combines, Trade, 280
 Commencing business, 30
 Commission on land sales in Ireland, 118
 Commissioners, Additional, to make assessments, 19
 —, —, to state case if surveyor requires, 19
 —, —, clerk to attend meetings, 46
 Commissioners, General, to appoint assessors, 15
 —, —, to make assessments, 18–22
 —, —, general provisions, 55
 —, —, penalty for not withdrawing from personal matter, 126
 Commissioners of Land Tax, 54
 Commissioners, Income Tax, 54
 —, —, parish re-assessed for sums lost by neglect, 139
 — for the duties on offices, 59
 Commissioners, Special, general provisions, 325
 —, —, functions in Ireland, 113
 —, —, to assess railways, 142
 —, —, to act under Schedule C, 202
 —, —, to assess foreign remittances, 293
 —, —, assessments and appeals, 324
 Committee of lunatic, acts by, 6
 Companies. *See under* CORPORATIONS
 Compensation Fund Charge and tied houses, 276
 —, —, and deduction of tax from rent, 180
 — for accident, 282

Constables to assist, 142
 Constructive remittance, 294–98
 Contingent interest in profits, 283
 Continuance of assessments, 198
 Contract not to deduct tax, 107, 197
 Control of foreign concern, 213
 Copper mines, assessment of, 165
 Corporations, companies, societies, etc., general provisions, 61
 —, —, —, return of employees, 146
 —, —, —, may not claim exemption, 3
 —, —, —, not to pay tax on directors' fees, 307
 —, —, —, rent-free residence of employees, 308
 Cost of High Court cases, 77
 — proceedings, 138, 141
 Cranes included in annual value of property, 159
 Creditors in possession to pay tax, 180
 — to allow deduction, 180
 — conducting business, 254
 Crown, general provisions, 61
 —, priority of, 48
 — servants abroad, 121
 — premises and House Duty, 337
 Cubicles not separate dwellings, 370
 Curator, acts by, 6

 D, SCHEDULE, charging sections, 205
 —, what constitutes residence (individuals), 207
 —, — (companies), 212
 —, persons and companies owning foreign business, 221
 —, — holding preponderating shares in foreign companies, 221
 —, agents to foreign traders, 229
 —, branches of foreign concerns, 229
 —, extent of, 234
 —, what constitutes trading, 237
 —, what is profit, 237
 —, application of profit immaterial, 253
 —, Case I, 256
 —, Case II, 270
 —, Cases I and II, 270
 —, Case III, 291
 —, Case IV, 292
 —, Case V, 292
 —, Case VI, 304
 —, all cases, 305
 —, analysis of, 372
 —, procedure in making assessments, 16–20

- D, Schedule, additional assessments, 20
 —, appeals, 22
 —, earned income rates, 72
 —, oath of secrecy, 122
 —, profits of lands to be excluded, 286
 Damage for wrongful dismissal, 266
 Damages, interest given as, 111
 Dead rent, 165, 166
 Death, liability of executors, etc., 8, 180, 194
 —, adjustment of assessment, 31
 Debentures, cost of issuing, 267
 —, interest paid to non-residents, 269
 Debts, doubtful and bad, 254
 Deceased persons, etc. *See under* DEATH
 Deduction of tax by persons assessed for others, 9
 — before passage of Act, 10, 11
 — from interest, annuities, etc., 83
 — from percentage on sales, 97
 —, certificate that tax has been paid, 110, 305
 — from patent royalties, 124
 —, penalty for refusal to allow, 137
 — from dead rent, 166
 — from rent, 179, 180, 194
 — from charges on property, 179
 — not affected by Compensation Fund Charge, 180
 — by landlords, 180
 — under Schedule C, 204
 — from salaries of offices, 316
 Deductions from profits not authorised, 156, 181
 —, capital losses or charges, 156
 —, assets in defective condition, 168
 — not made because of special allocation, 173
 — for future obligations, 176
 —, lists of inadmissible, Sched. D, Case I, 256, 269
 —, —, —, Cases I & —II, 270
 —, exhaustion of capital, 257
 —, pit sinking, 257
 —, short loan interest, 262
 —, purchase money, 265
 Deductions from profits, cost of obtaining capital, 266
 —, — removal, 267
 —, rent of trade premises, 269, 271, 272
 —, expense in course of trade, 273
 —, loss in other concerns, 174, 269, 282
 —, plantation companies, 283
 Defacing notices, penalty for, 136
 Deferred pay as earned income, 72
 Delivery of forms, notices, etc., 75
 Demand note, 47
 Depreciation allowance, general provisions, 63
 Deputies, 316
 Directors' fees, tax not payable by company, 307
 — travelling expenses, 318, 319
 Discontinuance of business, 31, 32
 — of section of business, 143, 254
 Distraint, general provisions, 48, 180, 194, 197
 —, illegal, 25
 — on husband for wife, 81
 — in Scotland, 321
 Dividends, title to deduct tax, 3
 Divisions, Income Tax, 123
 Docks, assessment of, 167
 —, London, 306
 Double assessment, 70
 Doubtful debts, 257
 Drainage rate, deduction from assessment, 181
 Drains, 167
 Dues in right of Church, 163
 Duplicates of assessment for collector, 36
 Duties and fees on presentation, 181
 E, SCHEDULE, general provisions, 306–320
 —, procedure in making assessments, 17, 18
 —, additional assessments, 20, 22
 —, increased remuneration during year, 22
 —, appeals, 22
 Earned income, general provisions, 70
 — rates, 13, 14, 71
 — claims by husband and wife, 79
 Easter offerings, 311, 312
 Embankment rate, deduction from assessment, 181
 Employees of corporations, companies, etc., 61, 306

- Employees of Industrial and Provident Societies, 81
- , returns of salaries, 146
- , —, —, penalties, 132
- of railways, 144
- becoming proprietors, 283
- having contingent interest in business, 283
- — rent-free residence, 308
- Empty property, 196
- houses liable to House Duty if furnished, 335
- — and House Duty, 356, 369
- End of business, 31, 32
- Engine included in annual value of property, 158
- -drivers, 314
- Errors in assessments and notices, 17
- forms, 74
- Estate offices, 344
- Exchequer bills, interest on, 83
- Executors, liability of, 8, 180, 194
- Exemption by letters patent, 1
- by private Act, 1
- to Insurance Funds, 1
- to small incomes, 2
- to individuals only, 3
- limits, history of, 4
- by repayment, 4
- to partners and joint tenants, 4, 5
- to charities, 40
- to Friendly Societies, 76
- claims by husband and wife, 79
- to Industrial and Provident Societies, 81
- claims by non-residents, 120
- , false claims to, 133
- to savings banks, 153
- , Schedule A, No. VI, 183
- , Schedule C, 202
- , rent-free residence, 308
- from House Duty, 336
- Expenses incurred by clergymen, etc., 44
- , Schedule E, 317
- FACT, questions of, 78
- Failure to deduct tax, 104
- Fairs, 167
- False claims, penalties for, 134
- statements, 136
- Farm-house and House Duty, 365
- Fellowships, assessment of, 61, 256
- Fencing rate, deduction from assessment, 181
- Ferries, 167
- Finance Act, payments prior to passage of, 11
- Finance Act, deduction prior to passage of, 111
- Fines for offences, 142
- in respect of lands, 164
- Fire insurance premiums, 200
- Firms. *See under* PARTNERS and PARTNERSHIPS
- First-fruits, 181
- Fishings, 167
- Fixtures included in annual value, 158
- Floods, loss by, 198
- Foreign board of management, 219
- bonds remitted, 301, 302
- business owned by resident in United Kingdom, 221
- company, shares held in United Kingdom, 221
- debenture-holders, 269
- dividends, concern having branch in United Kingdom, 302
- employer, 319
- income, analysis, 374
- —, general rules, 292–304
- —, place of assessment, 22
- —, cost of distribution to owners, 304
- — constructively remitted, 294–298
- ministers, 73
- partnerships, 207
- possessions (definition), 221
- securities, stocks, shares, and rents, 293
- trades and agents in United Kingdom, 229
- taxation, 246
- Forest assessed Schedules A and B 192
- Forgery, penalty for, 137
- Forms, general provisions, 73
- , errors in, 74
- of return required, 148
- Fractions, 14
- Fraternities, assessment of, 61, 256
- Free of tax, contracts and directions to make payments, 107
- Friendly societies, exemption to, 75
- Functions of general commissioners, 58
- Furnished house, profit of letting, 285
- —, liability to House Duty, 335
- lodgings and House Duty, 365
- GARDENS and House Duty, 336, 357
- Gasworks, 167, 168
- , foreign, 214

General Commissioners. *See under*
COMMISSIONERS

Gifts, 311

Glass-house, 190

Golf club, 245

Guaranteed interest on expropriation,
245

HALLS and House Duty, 363

Health, persons abroad for reasons of,
121

High Court cases, general provisions,
76

Hire purchase, 285

Hop-grounds, 193

Hospitals, exemption of, 40, 183, 184
— and House Duty, 337

Hotels and House Duty, 343, 357,
365

Husband and wife, general provisions,
72

— — —, earned income claims, 72

IDIOTS, acts by agents, 6

Imprisonment for non-payment, 49

Improvement of machinery, etc., 64
—, cost of, 268

Inadmissible deductions. *See under*
DEDUCTIONS

Income tax an annual duty, 9

— — — not a trade expense, 279

Increased remuneration during year,
22

Industrial and Provident Societies,
81

Infants, acts by agents, 6

Inhabited House Duty, basis of charge,
335

— — — —, collection, 336

— — — —, exemptions, 336

— — — —, premises, 357

— — — —, rates of duty, 364

— — — —, rules for assessing,
367

— — — —, year of assessment,
371

Inland navigations, 167

Inmates, returns of, 146

Inns and House Duty, 365

Insane persons, acts by agents, 6

Inspection of properties, 198, 341

Instalments, where they constitute
annuities, 92

Insurers, 82

Insurance funds, exemption of, 1

— companies, 246, 345

—, sums receivable, 257

— *See under* LIFE INSURANCE

Interest, general provisions, 82

— assessed as part of profits (Case I),
83

— as a separate subject of assess-
ment (Case III), 86, 291

— assessable, however applied,
90

— secured on rates, how assessed,
91, 99–102

—, what is “annual,” 94

— not wholly paid out of profits
charged, 99

—, failure to deduct tax from, 104

— contracts, etc., not to deduct
tax, 107

—, annual, not a trade expense, 111

— paid before passage of Act, 111

—, deficiency in tax deducted, 111

—, excess of tax deducted, 111

— given as damages, 112

— paid on winding up, 112

— on bank loan, 94, 95, 113

— from savings banks, 153

— paid on expropriation, 245

— on short loans, 262

Ireland, general provisions, 113

Iron mines, 165

— works, 167

Isle of Man, residents in, 121

Isolated transaction, 240

JUDGMENT debt, interest on, 98

Jurisdiction, parishes, etc., 123

— of commissioners, 207

LANDLORD may appeal, 25

— charged for certain properties,
178, 181

—, deduction of tax by, 180

— bearing tenant's burdens, 195,
323

— sometimes charged to House
Duty, 367

Law, questions of, 78

Land Tax, deduction from assessment,
181

— — —, general provisions, 378

Lead mines, assessment of, 165

Lease rent as criterion of annual value,
160, 196

—, production of, 196

Letters patent, exemption by, 1

Liability to Income Tax. *See*
ANALYSIS on p. 372

Library and Income Tax liability, 186,
187

— — — House Duty liability, 343,
360

Licensed premises, 273, 278
 — and House Duty, 343, 357, 364
 Life insurance premiums, general provisions, 118
 —, false claims to allowance, 135
 Limestone quarries, 165
 Liquidation, payment of tax, 49
 Liquidator, misfeasance by, 49
 Literary institutions, 183, 186
 Loans lost, 261, 274
 Lodgers, return of, 146
 London, 200
 Loss, adjustment in case of, 30
 —, specific cause of, 31, 287
 — in another concern, 156, 174, 269, 282
 — in past years, 165, 254, 306
 — on farms, 173
 Lunatics, acts by agents, 6

 MACHINERY, depreciation of, 63
 — included in annual value, 158
 Maintenance of property, 190
 Manager employed abroad, 319
 Management of property, 190
 — of foreign company, 213
 Manors, profits of, 164, 178
 Manse, annual value of, 309-10
 Mariners absent abroad, 208
 Market, profits of, 167, 174
 — gardens, 193
 — and House Duty, 336
 Married women, acts by agents, 6
 —. *See under* HUSBAND AND WIFE
 Meetings of commissioners, 55
 Metropolis, 200
 Milk sellers, 291
 Mines, assessment of, 165
 —, appeals to Special Commissioners, 178
 Ministers, general provisions, 44
 Misfeasance by liquidator, 49
 Missionaries abroad, 121
 Mitigation of penalties, 141
 Mortgagee in possession to pay tax, 180
 — to permit deduction of tax, 180
 Moveable subjects not included in annual value, 158
 Mundic mines, 165
 Municipal undertakings, 61, 167-76
 — offices, 61, 63
 Mutual benefit society, 43
 — insurance, 248, 251

NATIONAL Insurance funds exempt, 1
 Neglect to make return, 131, 132
 New residents, service of forms, 20
 — business, adjustment of assessment, 30
 — plant, wear and tear of, 64, 68
 Non-payment of tax, 47
 Non-residents, manner of claims by, 6
 — taking percentage on sales, 97
 —, general provisions, 120
 —, claims by, 121
 —, exemption for foreign income, 294
 —, liability on income in United Kingdom, 206
 — on temporary visits to United Kingdom, 206
 Notices requiring returns, 15
 — of assessments not necessarily within three years, 21
 — of appeal day, 22
 — of assessment, 25
 —, service of, 75
 Number or letter assessments, 121
 Nurseries, 193

 OATHS, general provisions, 122
 — at appeals, 29
 Obsolescence, 65
 Obstructing officers, penalty for, 136
 Occupation, what constitutes, 161
 Occupiers, tax charge on, 180, 194
 — bearing landlord's burdens, 195
 —, House Duty charged on, 367
 Omission to assess, 20
 —, surcharge by surveyor, 32
 — to deduct tax, 104
 Owner of property may appeal, 25
 —, deduction of tax by, 180, 181

 PARISHES, divisions, etc., 123
 Participating policy-holders, 248, 251
 Partners, claims to abatement and exemption, 5
 — residing abroad, returns by agent, 8
 —, claims to earned income rates by, 73
 Partnerships, foreign, 207
 —, assessment in one sum, 286
 —, returns by, 287
 Patent royalties, general provisions, 124
 Payment of duties, 46
 Penalties, list of, 125-38
 —, none other impossible, 138
 —, recovery of, 140

- Penalties, time limit, 140
Pensions, earned income rates, 72
— to widows of Crown servants abroad, 121
— from public revenue, 176
Perjury, penalties for, 133
Perquisites, 316
Perpetual obligations, 176
Petition of right, 28
Pit-sinking, 257
Place of assessment, Schedule A, 178
— — —, Schedule D, 291, 305
Plant, depreciation of, 63
Plantation companies, 283
Police station, 61
Poor rate, copy for use of assessor, 18
— — — basis of assessment, 195
— — — and House Duty assessments, 366
Post Office order, payment by, 47
Postage stamps, payment in, 47
Preceding year, provisions of, 9
Premises. *See under* BUSINESS PREMISES
Premium for lease, 271, 273
Private Act conflicting with Taxing Act, 1, 173
Privilege from local offices, Militia, etc., 138
Proceedings, general provisions, 138
Procurations, 181
Profit, what constitutes, 237
— — — deductions from. *See under* DEDUCTIONS
Provisional collection of taxes, 11
Public schools, 183, 184
- QUALIFICATION of Commissioners, 54, 56, 59
Quarries, assessment of, 165
— — —, appeals to Special Commissioners, 178
Questions of law and fact, 78
- RACK-RENT, 157, 160
Railways, general provisions, 142
Rates on coal imported, 237
Rates, interest secured on, 91, 99–102
— — —, interest accruing on balances, 90
— — — of tax, 13, 14
— — — on earned income, 71
— — — on small unearned incomes, 14
— — — of super-tax, 326
— — — of house duty, 364
Reassessment in case of default, 53
— — — commissioners' neglect, 139
- Receipt, 47
— — — books, 54
— — —, production in civil proceedings, 148
— — — need not be stamped, 325
Receiver appointed by Court of Chancery, 7
Relief to earned incomes, 70
Remittances from abroad, on whom charged, 8
— — —. *See also under* FOREIGN
Removal, appeals in cases of, 22
— — —, collection in cases of, 49
— — — to escape payment, 137
— — —, cost of, 267
Remuneration of officers, general provisions, 144
Renewal of machinery, etc., 64
Rent, deduction of tax from, 179, 180, 194
— — —, omission to deduct tax, 105, 106
— — — -free residence, 308
Repairs, general provisions, 189
— — — to collegiate churches, etc., 181
— — — of tied houses by brewers, 275
Repayment, general provisions, 145
— — — in cases of loss, 30
Residence, place of, for purposes of returns, 15
— — —, what constitutes (individuals), 206
— — —, — — — (companies), 212
— — —, rent-free, 388
Resolution of House of Commons, 11
Retired minister, annuity to, 244
Returns, general provisions, 146
— — — by agents, 7
— — — for partners residing abroad, 8
— — —, notices requiring, 15
— — — to be delivered to assessors, 16
— — —, procedure respecting, 16, 17
— — —, estimates in absence of, 17
— — — to be filed in Commissioners' office, 19
— — — by corporations, companies, societies, etc., 61
— — — by husband and wife, 78
— — —, penalties for failure to make, 130
— — —, — — — for false, 133
— — —, secrecy of, 148
— — — forms, 148
— — — of savings bank interest, 154
— — —, separate, for lands in separate ownerships, 178
— — —, place from which made, 291
— — — to Special Commissioners, 324
Rewards, 142

Royalties, patent, 124
 —, Schedule A, 164, 178

SALE of assets, 238
 — of lands, 240

Salt springs, 167

Savings banks, general provisions, 153

Schedule of arrears (defaulters), 154
 — deficiencies, 155

Schedules of assessment, 156
 — —, provisions of one to apply to others, 156
 — —, and *see under* A, B, C, D, and E

Schoolmaster and mistress, joint appointment, 317

Schools and House Duty liability, 337, 358, 359, 361

Scientific institutions, 183, 187

Scotland, special provisions, 320

Sea-walls, deduction from assessment, 181, 182

Secrecy, oath of, 122
 —, acting before taking oath of, 138
 — of returns, 148

Secretaries of companies, duties of, 61, 146

Security by collectors, 52

Separate dwellings and House Duty, 369

Shaft-sinking, 261

Shafts included in annual value, 158

Shipping, depreciation of, 65-70
 — insurance funds, 268

Shooting rights included in assessment, 192

Shop as place of residence, 16
 — and House Duty, 362, 364

Slate quarries, 165

Slaughter-houses, 161

Solicitor, 24

Special assessments, 324
 — appeals, 324
 — Commissioners. *See under* COMMISSIONERS

Specific cause of loss, 31, 287

Stables and House Duty, 356, 357

Stamp duty, 325

Statements. *See under* RETURNS

Steam power, supplying, 245

Stipends from public revenue, 306

Stone quarries, 165

Streams of water, 167

Subscriptions, trade, 279-81
 —, voluntary, 307

Succession to business, 287

Superannuation allowances as earned income, 72

Superannuation, deductions for, 310, 312, 313

Super-tax, general provisions, 326
 —, rates, 326

Supplementary assessments, 35

Surcharges, 32
 —, penalties concerning, 135

Surveyor, general provisions, 331
 — to inspect returns, assessments, etc., 17-20
 — may object to assessments, 20
 — certifying additional assessments, 20
 — "discovering" liability, 21
 — at appeals, 24
 — has right to surcharge, 32
 —, penalties on, 129

Syndicates, 240, 243

Synodals, 181

TEINDS, 163

Tempest, loss by, 198

Tenant. *See under* OCCUPIER and LANDLORD

Tenements, assessment to House Duty, 341, 346, 367
 — being separate dwellings, 369

Tenths, 181

Tied houses, 273-78
 — — and House Duty assessments, 367

Tin mines, assessment of, 165

Tithe rent-charge in England, 162
 — — in Ireland, 117
 — —, cost of collection, 162
 — —, deduction for rates, 181

Tithes in kind, 163
 — not arising from lands, 163
 — compounded for, 163
 —, rents, etc., in lieu of, 179

Tolls, 167
 — in Scotland, 323

Trade Associations, 279-281
 — Unions, 332

Trading, what constitutes, 237

Travelling expenses, 318, 319

Trustees, acts by, 6
 —, remittances from foreign, 303

Tutors, acts by, 6

Two parties, trading requires, 168, 169, 248, 251, 252

UNCOMPLETED transactions, 246

Undercharges, 20
 —, surcharge may be made, 32

Underwriting for clients, returns, etc.

- Unearned incomes, rates for small, 14
 ——— premiums, 247
 Universities, 323
 ———, buildings, and offices exempt,
 183
 Unoccupied. *See under* EMPTY
 Untrue, meaning of term, 135

 VALUATION on appeal, 26
 Voting, 323

 WAREHOUSES and House Duty, 336,
 337, 362
 Warrants issued to collectors, 36
 ——— to break open, 48
 Waterworks, 167, 169
 Wear and tear allowance, general pro-
 visions, 63

 Wharves and House Duty, 336
 Widows of Crown servants residing
 abroad, 121
 Wife. *See under* HUSBAND AND
 WIFE
 Wills directing payments free of tax,
 107
 Winding up, interest paid on, 112
 Withdrawal of commissioners from
 hearing of personal matters, 126

 YACHT moored off coast, 210
 Yards and House Duty, 357
 Year, Income Tax, 15
 ———, House Duty, 371
 Yearly charge, 9
 ——— interest, 83
 ——— ———, and *see under* ANNUAL

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CONTENTS

PAGE	PAGE
ADVERTISING AS A BUSINESS FORCE	15
ADS AND SALES	15
ACCOUNTS OF EXECUTORS	10
ACCOUNTANCY	9
AUDITING, ACCOUNTING, AND BANKING	6
BALANCE SHEETS	7
BANK ORGANISATION, MANAGEMENT AND ACCOUNTS	5
BANKRUPTCY AND BILLS OF SALE	10
BILLS, CHEQUES, AND NOTES	7
BOOK-KEEPING, DICTIONARY OF	9
BUSINESS MAN'S GUIDE	3
CARRIAGE, LAW OF	12
CHAIRMAN'S MANUAL	4
"COLE" CODE DICTIONARY	16
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COMMERCIAL ENCYCLOPÆDIA	2
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CONSULAR REQUIREMENTS	14
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COUNTING HOUSE AND FACTORY ORGANISATION	4
DICTIONARY, ENGLISH-FRENCH	14
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DICTIONARY OF COMMERCIAL CORRESPONDENCE	14
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DICTIONARY (ABRIDGED), PORTUGUESE AND ENGLISH	14
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INCOME TAX LAW	12
INSURANCE	4
INSURANCE OFFICE ORGANISATION, ETC.	4
LAW RELATING TO SECRET COMMISSIONS, ETC.	12
LAW OF EVIDENCE	13
LAW OF REPAIRS	13
LICENSING, GUIDE TO THE LAW OF	11
LECTURES ON BRITISH COMMERCE	3
LOCAL GOVERNMENT CASE LAW	11
MANUFACTURING BOOK-KEEPING AND COSTS	9
MARINE LAW	11
MECHANICAL TRACTION, LAW OF	10
MERCANTILE LAW	11
MONEY, EXCHANGE, AND BANKING	6
OFFICE ORGANISATION	4
OUTLINES OF THE ECONOMIC HISTORY OF ENGLAND	16
PERSONAL ACCOUNTS	10
PRINCIPLES OF PRACTICAL PUBLICITY	15
PRACTICAL BANKING	7
PRACTICAL SALESMANSHIP	15
PROSPECTUSES	7
PUBLIC MAN'S GUIDE	3
PSYCHOLOGY OF ADVERTISING	15
RAILWAY REBATES CASE LAW	11
SECRETARY'S HANDBOOK	7
SHIPPING OFFICE ORGANISATION, ETC.	5
SOLICITOR'S OFFICE ORGANISATION, ETC.	5
STOCK EXCHANGE	10
STOCK-BROKER'S OFFICE ORGANISATION	6
SYSTEMATIC INDEXING	16
TELEGRAPH CIPHERS	16
TRAMWAY RATING VALUATIONS	16
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